TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 393

GYNTHER STORAASLI, APPELLANT,

vs.

THE STATE OF MINNESOTA

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

FILED AUGUST 27, 1930.

(35,315)

(35,315)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 16, 1930

[fols. a & 1]

IN DISTRICT COURT OF RAMSEY COUNTY, SECOND JUDICIAL DISTRICT

NOTICE OF DELINQUENT MOTOR VEHICLE TAX

To Gynther Storaasli, St. Paul, Minnesota; the State of Minnesota to the above named:

Please take notice, That, pursuant to Chapter 335, Laws of 1929, the Secretary of State has filed in this office a list of Motor Vehicles on which the tax and penalty for 1929 appears delinquent upon the record, sufficient showing not having been made upon which to remove the same from the registration tax list for said year. Included in this list is the following motor vehicle last registered in your name in 1928, under registration No. A-159588:

Make, Ford; Type, Sedan; Motor No., 7,340,959.

There is now charged against you:

For tax (to the state)	$10.00
For penalty (to the state)	10.00
Fee for this notice (to the clerk of court)	.25
Total	20.25

[fol. 2] You are, therefore, required within ten days to make payment in full at this office of said sum together with the costs and fees of these proceedings, as provided by law, or within said time to file your answer to this Notice, executed upon the reverse side hereof.

If you deny liability for the tax and file an answer, you will pay the clerk of court for the fee for this notice and also the fee for other services he may render as provided by law. See section of the law quoted below.

N. C. Robinson, Clerk of said Court.

[fol. 3] IN DISTRICT COURT OF RAMSEY COUNTY

STATE OF MINNESOTA, Plaintiff,

vs.

GYNTHER STORAASLI, Defendant

ANSWER TO NOTICE OF DELINQUENT MOTOR VEHICLE TAX

Comes now Gynther Storaasli, the defendant above named, and for his answer to the Notice of Delinquent

Motor Vehicle Tax in the above entitled matter, denies that any tax or penalty is due the State of Minnesota, upon the vehicle described in said notice; and for his grounds of such denial, alleges and shows to the Court:

I

That during all of the times covered by said notice, defendant has been, and now is, the sole owner of said motor vehicle; that he now is, and, at all times covered by said notice, was, a non-resident of the State of Minnesota, and a member of the Military Forces of the United States, quartered and resident upon the United States Military Reser- [fol. 4] vation at Fort Snelling; and that said motor vehicle is, and at all such times has been, kept and maintained upon the said military reservation; that said motor vehicle has not been operated for hire within the State of Minnesota, nor has it been present within the jurisdiction of the said State of Minnesota or upon its roads, highways or streets for any period of ten days; that said motor vehicle has not been, nor is it now, operated upon the highways, roads and streets of the State of Minnesota, except as a visitor for brief periods.

II

That at all times herein mentioned, the said United States Military Reservation at Fort Snelling was, and now is, a territory solely and exclusively within the jurisdiction of the United States, and under the governmental control of the Government of the United States; that all governmental functions upon said military reservation, including police power, traffic control and maintenance of highways, are vested in and exercised by the Commanding Officer of said reservation, who is an officer of the Army of the United States, commissioned by the President thereof under the laws of the United States, to the total exclusion of the governmental control and authority of the State of Minnesota, and that such military reservation is not a part of the State of Minnesota.

[fol. 5] III

That during all the times aforesaid, the Commanding Officer of the said military reservation has created and

maintained, in pursuance of the power vested in him, upon said military reservation, an adequate and complete system of motor vehicle registration, and has promulgated and established, in connection with and in enforcement of such system, a set of laws, rules and regulations, to which all motor vehicle owners, resident upon such reservation, are required to conform, and that the motor vehicle which was owned by the defendant herein, and which is the subject of the within litigation, at all times mentioned, has been duly and properly registered and licensed under such laws and regulations and has carried license plates which have been provided in connection with the registration of said motor vehicle, together with the registration certificate issued by the Registrar of Motor Vehicles on the United States Military Reservation at Fort Snelling.

IV

That this defendant, at all times, has been and is now, ready, willing and able to comply with all and singular the laws and regulations of the State of Minnesota applicable to non-residents of said State, whenever said non-residents have occasion to use the roads and public streets of said State, and has, through his authorized agent, the Registrar of Motor Vehicles of the Military Reservation at Fort Snelling, notified and informed the proper officials of the State [fol. 6] of Minnesota, of his said readiness to comply therewith, and that he has, at all times, carried the proper license plates issued to him by the Registrar of Motor Vehicles of the Military Reservation at Fort Snelling and has complied with all of the traffic laws and regulations of said State at all times when defendant has operated said vehicle over and upon the roads and highways of the State of Minnesota.

Wherefore defendant prays judgment dismissing this action, and such costs as to this Court may seem just and equitable and for such other relief as this Court may see fit to grant.

Lewis L. Drill, Attorney for Defendant.

Dated Aug. 26th, 1929.

[fol. 7] IN DISTRICT COURT OF RAMSEY COUNTY

MOTION FOR JUDGMENT

The defendant in the above entitled action being included in the list of owners of motor vehicles upon which a tax for the year 1929, has become due and is delinquent, which list was filed in the office of the clerk of this court on the second Monday in July, 1929, in accordance with the provisions of Section 20, Chapter 418, Laws 1923, as amended, and the defendant having filed his answer setting forth his defense and objections to the tax and penalty against him as set out in such list, the State of Minnesota, the plaintiff herein, now moves the court for judgment in its behalf for the amount of the tax and penalty payable by the defendant as set out in the certified statement so filed by the registrar of motor vehicles notwithstanding the answer of the defendant herein.

G. A. Youngquist, Attorney General; James E. Markham, Deputy Attorney General, Attorneys for Plaintiff.

Dated September 5, 1929.

It is stipulated that the foregoing motion may be bought on for hearing and heard before the judge of the court then sitting in chambers, at the court house in the city of St. Paul on Wednesday, September 11, 1929, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel [fol. 8] can be heard and that upon such hearing the court may direct judgment in accordance with the rights of the parties as the court shall determine.

G. A. Youngquist, Attorney General; James E. Markham, Deputy Attorney General; Lewis L. Drill, Attorney for Defendant.

IN DISTRICT COURT OF RAMSEY COUNTY

NOTICE OF SUBSTITUTION OF ATTORNEYS

To the plaintiff above named and to G. A. Youngquist and James E. Markham, its attorneys:

SIRS: You will please take notice that James F. Lynch, 316 Hamm Building, and Pierce Butler, Jr., 1006 Mer-

chants National Bank Building, both of St. Paul, Minnesota, have been substituted as attorneys for the defendant in my place and in my stead and all further proceedings will be had with them.

Dated at St. Paul, Minnesota, this 19th day of October, 1929.

Lewis L. Drill.

[fol. 9] In District Court of Ramsey County

Order Granting Motion for Judgment

The defendant in this action being included in the list of owners of motor vehicles upon which a tax for the year 1929 has become due and delinquent, specifically Ford Sedan No. 7,340,959, registered with the Secretary of State for the year 1928 under No. A159588, which list was filed in the office of the clerk of this court on the second Monday in July, 1929, in accordance with the provisions of Section 20, Chapter 418, Laws 1923, as amended, and the defendant having filed in this court his answer setting forth his defense and objections to the tax and penalty thereon against him as the owner of such vehicle, as so set out in such list, and the state of Minnesota, the plaintiff in this action, having moved the court for judgment in its behalf for the amount of such tax and penalty notwithstanding the answer of the defendant thereto, which answer is on file in the office of the clerk of this court, and the cause standing on the calendar at a special term of this court held on the second day of November, 1929, the parties by their respective counsel appeared before the court on that date, James E. Markham, Esq., Deputy Attorney General, appearing as counsel for the State, and Messrs. Pierce Butler, Jr., James F. Lynch and Captain Ingomar M. Oseth, appearing as counsel for the defendant, and it was then and [fol. 10] there in open court agreed that the plaintiff's motion for judgment be submitted to the Court upon briefs, and it was so submitted.

Now, having given consideration to the arguments of counsel in the briefs so presented, it is

Ordered that the motion of the plaintiff for judgment in its behalf against the defendant for the amount of the tax and penalty upon the motor vehicle described in the delinquent list referred to herein be and it is granted, and judgment is hereby ordered in favor of the plaintiff and against the defendant for twenty dollars, the amount of said delinquent tax and penalty, with its disbursements to be taxed by the clerk in accordance with the usual practice in civil actions.

Dated December 5, 1929.

Charles Beelhoefer, District Judge.

In District Court of Ramsey County

Waiver of Notice of Taxation of Costs

Defendant waives notice of taxation of costs and consents that they be taxed by the clerk without notice.

Dated December 20, 1929.

Doherty, Rumble, Bunn & Butler, Attorneys for Defendant, 1006 Mer. Bank Bldg., Saint Paul, Minnesota.

[fol. 11] In District Court of Ramsey County

Judgment

Pursuant to the order duly made in the above entitled action on the 5th day of December, A. D. 1929.

Now, on motion of Henry Benson and James Markham, said Attorney, It Is Hereby Adjudged that the Plaintiff herein recover of said Defendant Gynther Storaasli, the sum of Twenty and no/100 Dollars with Two and 25/100 Dollars costs and disbursements, in all amounting to $22.25.

Signed this 24 day of December A. D. 1929.

N. C. Robinson, Clerk, by M. A. Cowing, Deputy Clerk.

[fol. 12] In District Court of Ramsey County

Notice of Appeal

To Henry N. Benson, Attorney General; James E. Markham, attorneys for the plaintiff, and to N. C. Robinson, clerk of District Court:

Please take notice that the above defendant appeals to the Supreme Court of the State of Minnesota from the judgment in the above entitled action, by which it was adjudged and decreed that plaintiff recover from defendant the sum of Twenty-two and 25/100 Dollars ($22.25). Said appeal is taken from the whole of said judgment and from each and every part thereof.

James F. Lynch, Doherty, Rumble, Bunn & Butler, Attorneys for Defendant. Ingomar M. Oseth, of Counsel.

Due and personal service of the within Notice of Appeal is hereby admitted at St. Paul, Minn., this 31 day of December, 1929. Any and all bond on such appeal is hereby waived and said appeal may be as effective as though a supersedeas bond had been given.

Henry N. Benson, James E. Markham, Attorneys for Plaintiff.

Due and personal service of the within Notice of Appeal is hereby admitted this 31 day of December, 1929.

N. C. Robinson, Clerk of District Court.

[fol. 13] In Supreme Court of Minnesota

Assignments of Error—Filed Feb. 15, 1930

The Court erred:

I

In making its order for judgment on the pleadings in favor of the plaintiff and against the defendant.

II

In entering judgment in favor of the plaintiff and against the defendant.

III

In making its order aforesaid, because it thereby denied to the defendant rights reserved to him by the Constitution of the United States, notably by the Fourteenth Article of Amendment thereof, and by the Constitution of Minnesota.

[File endorsement omitted.]

[fol. 14] [File endorsement omitted.]

IN SUPREME COURT OF MINNESOTA
No. 142. 27913

STATE OF MINNESOTA, Respondent,

vs.

GYNTHER STORAASLI, Appellant

Ramsey County. Olsen, C.

Syllabus

1. Jurisdiction over the Fort Snelling military reservation was ceded to the United States by Chapter 57, Laws 1889, except to the extent therein specially limited.

2. This state may not impose a property tax upon property located within such military reservation and having no situs for taxation in this state outside of the reservation.

3. The Minnesota motor vehicle tax is both a property tax and a privilege tax. The elements of property tax and privilege tax are inseparable and each extends to the entire tax. It may be imposed as a privilege tax against nonresidents using our highways although their cars have not a situs for the ordinary taxation as property in this state.

4. Defendant is a member of the military forces of the United States, stationed at Fort Snelling. He owns an automobile and drives it for his own convenience and pleasure upon the highways of the state outside of the

military reservation. He so used the car for more than a year. He is not a resident of this state and has not registered his car in the state or country of his legal residence. He has registered it under regulations of the commanding officer at Fort Senlling and paid a small fee to defray the expense of registration. It is held that he is subject to the payment of the state motor vehicle tax, and is not exempt under the provision exempting visitors to the state for a limited period.

5. The motor vehicle license act does not violate the Fourteenth Amendment to the Federal Constitution.

Affirmed.

[fol. 15] OPINION—Filed April 25, 1930

Proceeding by the state to collect from defendant a license tax on an automobile. Judgment for recovery of the tax, penalty, and costs, was entered in the district court, and defendant appeals.

Defendant is a nonresident of this state, a member of the military forces of the United States, stationed at Fort Snelling. His place of legal residence is not disclosed. He has been there stationed for more than a year. He owns an automobile and, in the year 1928, paid the license tax to the state and received a proper state license and number plates, which he used. He keeps the car on the Fort Snelling military reservation, but uses it for travel on the highways of the state outside of the reservation. He states in his answer that he has not used the car on the highways outside of the reservation for any one period of ten consecutive days, and that he so uses it only as a visitor for brief periods at a time. The Fort Snelling reservation is a small tract of land adjacent to the cities of St. Paul and Minneapolis, and there is little occasion for the use of a car by defendant upon the reservation itself. By Chapter 57, Laws 1889, the state ceded to the United States jurisdiction of the territory embraced in the reservation. The state reserved the right to serve process and papers in civil or criminal cases on persons within the reservation, and to arrest and punish persons charged with crimes against the laws of the state, whether such crimes were committed within or without the boundaries of the reservation.

It appears that the commanding officer at Fort Snelling has created and maintains a system of registration for automobiles owned and kept there by members of the military forces. A charge of $3.00 is made to defray the expense of registration. The defendant's automobile was so registered and was provided with some form of license number and plates, and a form of registration certificate issued to defendant. Defendant states that he is willing to [fol. 16] comply with the laws and regulations of the state of Minnesota applicable to nonresidents.

In defendant's brief we find the following points presented:

1. That the Fort Snelling reservation is not within the jurisdiction of this state:

Except as to matters of jurisdiction reserved to the state by Chapter 57, Laws 1889, the statement is concededly correct.

2. That the state of Minnesota has no jurisdiction to tax property located on the military reservation:

This may be conceded so far as imposing a property tax upon property while there located so as to have no situs for taxation in this state.

3. That the Minnesota Motor Vehicle tax is a property tax:

The license tax is both a property tax and a privilege tax. State v. Oligney, 162 Minn. 302, 202 N. W. 893; Raymond v. Holm, 165 Minn. 215, 206 N. W. 166. It is a property tax in the sense that it exempts the vehicle licensed from other taxation as property. It is in lieu of other taxes. But it is equally clear that it is a privilege tax. All motor vehicles, with the exception hereinafter noted, are prohibited from using the public highways until the tax is paid. It is a tax imposed for the privilege of using the public highways of the state and collected for the specific purpose of building and maintaining such highways. The elements of property tax and privilege tax are inseparable. American Railway Exp. Co. v. Holm, 173 Minn., 72, 216 N. W. 542. The character of a privilege tax extends to the whole tax. So does the character of a property tax. As a property tax it could not be imposed against visitors from other states whose automobiles have not a situs for taxation in this state. Yet

it may be and is so imposed, except that visitors who, within ten days after entering the state or commencing to use the highways, register their automobile with the secre-
[fol. 17] tary of state, showing that the car is properly registered and licensed under the laws of the country or state of the owner, may use the highways of this state for a period of not more than ninety days without payment of the tax. It is so imposed on nonresidents as a privilege tax. Mason's Minn. State. Sections 2675, 2684.

4. Regarded as a privilege tax, it cannot be imposed on this car:

Under this heading, it is claimed that, defendant being a nonresident and having registered his car under regulations made by the comamnding officer of the military reservation, his car is exempt from the tax under Mason's Minn. Stat., Sec. 2684, exempting nonresidents under the conditions and limitations therein stated. We are unable to hold that the Fort Snelling military reservation is either a "country or state", within the meaning of that expression as used in this statute. This is but one country and that word quite clearly refers to foreign countries such as Canada and Mexico. The word "state" should not be given a narrow construction. Our statute, G. S. 1923, Sec. 10933, Subsec. 17, makes it include the District of Columbia. A state, as generally understood, is a territorial division having an organized civil government in some form, a political community.

Defendant does not claim to have registered his car at his place of legal residence. He did not become a resident or citizen of the military reservation by being stationed there. 19 C. J. 418. Whatever force, as law, the regulations of the commander at Fort Snelling may have within the reservation, they can hardly be claimed to have the force of law as to the use of highways outside of the reservation. Congress could make laws for the use of highways outside of the reservation for military purposes, or in aid of the business and operation of the reservation for purposes in which the Federal Government had an interest. It probably could not go beyond that.

[fol. 18] The reasonable inferences and conclusions from the pleadings and arguments here are that defendant used his car for his own convenience and pleasure in the ordinary way; that he so used it regularly and continuously,

although not every day, to go to and from the two cities and other places in the state outside of the reservation and that such use had continued for more than a year. He was not a visitor coming here from another state or country. He had his abode, but not his legal residence, on the reservation while stationed there. He had not registered his car with the secretary of state as a visitor from another state or country, and could not do so without registration in his home state.

The case of Bailey v. Smith, in the Federal district court of Iowa, quoted in plaintiff's brief, holds that a military reservation, of the same kind as Fort Snelling, is not a state, country, territory, or federal district, so as to come within the exception in the Iowa motor registration law.

The case of State v. Oligney, supra, is instructive here. There, a nonresident owner of a motor truck used it quite regularly to transport merchandise for hire from points in Wisconsin to the cities of St. Paul and Minneapolis in this state. In so doing he traveled over the highways of this state for part of each trip. He was held liable to the motor vehicle tax in this state. While the exemption of visitors whose cars were registered in their home state and who had registered here as visitors was not there involved, the holding that the legislature had undoubted constitutional power to impose the tax upon nonresidents using the highways of this state is in point. Hendrick v. Maryland, 235 U. S. 610, 59 L. Ed. 385, and Kane v. New Jersey, 242 U. S. 160, 61 L. Ed. 222, are cited.

5. It is stated, but not much argued, that, if construed as claimed by the plaintiff, the law is discriminatory and violates the equality provision of the Fourteenth Amendment. We see no objection to the law on that ground.

Judgment affirmed.

[fol. 19] [File endorsement omitted]

[fol. 19½] IN SUPREME COURT OF MINNESOTA

[Title omitted]

PETITION FOR REARGUMENT—Filed May 1, 1930

We respectfully submit that the Court has overlooked important points raised on this appeal. The court will

probably recall that the amount involved in the instant case was not sufficient to permit oral argument. Upon application twenty minutes was granted. Within that time it was difficult to adequately argue all important points.

[fol. 20] In the opinion in this case the court said:

"The Fort Snelling reservation is a small tract of land adjacent to the cities of St. Paul and Minneapolis and there is little occasion for the use of a car by defendant upon the reservation itself.

* * * * * * * * *

"The reasonable inferences and conclusions from the pleadings and arguments here are that defendant used his car for his own convenience and pleasure in the ordinary way; that he so used it regularly and continuously, although not every day, to go to and from the two cities and other places in the state outside of the reservation, and that such use had continued for more than a year."

The answer was perhaps not sufficiently specific and detailed upon these questions. It alleged that the vehicle in question had been kept and maintained upon the reservation; that it had not been operated for hire within the State of Minnesota; that it had not been present within the jurisdiction of the state for any period of ten days; that it had not been operated upon the highways of the state except as a visitor for brief periods. If the exact amount and nature [fol. 21] of the use is deemed material we pray an opportunity to prove, as we are advised the facts are, that over eighty per cent of the use of the defendant's car has been local to the reservation, that less than twenty per cent of such use has been off the reservation, and that a great part of its total use, both on and off the reservation, has been in line of military duty. We are advised that the same proportions hold for substantially all the private cars owned by members of the garrison.

The court at the conclusion of the opinion said:

"It is stated, but not much argued, that if construed as claimed by the plaintiff, the law is discriminatory and vio-

lates the equality provision of the Fourteenth Amendment. We see no objection to the law on that ground."

The argument upon this point was much abbreviated in view of the limitation as to time. Briefly, the discriminations claimed are two:

I

[fol. 22] Under the opinion filed in this case the Court has definitely held that the tax against this vehicle may be enforced as a privilege tax. It is conceded that the defendant is not subject to property taxation, so the whole tax, as to him, is for the privilege. But as to persons owning cars within the state, and who are subject to property taxation, the same payment pays a tax upon their cars as property "on a more onerous basis than other personal property" and also gives them the privilege to use the roads. By the enforcement of this tax to the full extent as against the residents of the military reservation, wholly as a privilege tax, the State singles out these individuals and taxes them at a higher rate for the privilege of using the roads of the state than it does its own residents. This is one discrimination.

II

[fol. 23] Residents of Iowa, the Dakotas or Wisconsin, living near the boundary line, may drive their cars in Minnesota every day, without paying any tax at all, provided only that their cars are not within the state for any continuous period of ninety days. But as the law is now construed, a resident of the military reservation who drives his car within the state at all most pay the total tax. This is certainly a most important difference of treatment, which the appellant claims is a discrimination.

In the view which the Court has taken of the facts, each of these discriminations seems perhaps less striking than the appellant feels they are. The fundamental inquiry on each no doubt is whether there is a sufficient difference of fact to justify the discrimination made. It is hard to deal

with that inquiry on the pleadings. For that reason, and [fol. 24] because the Court's effort to do so, necessary as the case came to the Court, seems to the appellant to have resulted in misapprehension as to what the real facts are, appellant petitions for a reargument, and moves that the judgment below upon the pleadings be reversed, so that appellant may have an opportunity to show, in detail, what the use of his car has been and is. Upon such a detailed showing of the facts appellant is convinced that the Court's view of the seriousness of the discriminations claimed may well be different.

Respectfully submitted.

James F. Lynch, Doherty, Rumble, Bunn & Butler, Saint Paul, Minnesota, Attorneys for Appellant. Ingomar M. Oseth, Captain, Third Infantry, of Counsel.

[fol. 25] IN SUPREME COURT OF MINNESOTA

27913

STATE OF MINNESOTA, Respondent,

vs.

GYNTHER STORAASLI, Appellant

NOTICE OF ORDER DENYING PETITION FOR REARGUMENT

State of Minnesota, Office of Clerk of Supreme Court, St. Paul, Minn.

May 23rd, 1930.

SIR: You will please take notice that on this date the following order was entered in the above entitled cause:

Ordered, that the petition for reargument herein be and the same hereby is denied and stay vacated.

Yours respectfully, Grace Kaercher Davis, Clerk Supreme Court.

[fol. 26] IN SUPREME COURT OF MINNESOTA

27913

STATE OF MINNESOTA, Respondent,

vs.

GYNTHER STORAASLI, Appellant

JUDGMENT—Filed May 23, 1930

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the Judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Ramsey be and the same hereby is in all things affirmed;

And it is further determined and adjudged that Respondent herein do have and recover of Appellant herein the sum and amount of forty-seven and 50/100 dollars ($47.50) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed May 23d, 1930, A. D.

By the Court.

Attest:

Grace Kaercher Davis, Clerk, by Peter O. Scow, Deputy

Statement for Judgment

Statutory Costs, $25.00; Printer, $22.50; Acknowledgments, $——; Return, $——; Postage and Express, $——; Filing Mandate, $——; Transcript, $——; Appeal Bond, $——; Total, $47.50.

[fol. 27] Clerk's certificate to foregoing paper omitted in printing.

[File endorsement omitted.]

[fol. 28] IN SUPREME COURT OF MINNESOTA

[Title omitted]

PETITION FOR APPEAL AND ASSIGNMENTS OF ERROR—Filed Aug. 18, 1930

Considering himself aggrieved by the final decision of the Supreme Court of the State of Minnesota, in the above

entitled cause, rendered on the 23rd day of May, 1930, Gynther Storaasli, appellant herein, hereby prays for the allowance of an appeal to the Supreme Court of the United States from said final judgment, and for an order fixing the amount of the bond for costs thereon.

Appellant represents that the issues involved in the above entitled cause question the validity of the motor vehicle registration tax law of the State of Minnesota, (to-wit: Sections 2762 to 2704, both inclusive, of Mason's General Statutes for 1927, as amended by Chapter 335, Session Laws of Minnesota, 1929), insofar as said law is construed to apply to and impose a motor vehicle registration tax upon a privately owned motor vehicle kept on the Fort Snelling Military Reservation by an officer of the United States Military forces stationed thereon, upon the ground of its being repugnant to the Constitution of the United States, notably the Fourteenth Article of Amendment thereof, in that said law and the authority exercised under it, deprived said appellant of rights reserved him by the Constitution of the United States, notably by the Fourteenth [fol. 29] Article of Amendment thereof; that the decision of said Minnesota Supreme Court, as set forth in the opinion filed by it in connection with its final judgment rendered May 23rd, 1930, as aforesaid, was in favor of the validity of said statute as so applied, and of the authority exercised under it, and denied the claim of the appellant that said statute as so applied, and the authority exercised under it, was repugnant to the Constitution of the United States; and that said cause is one in which, under the legislation in force prior to the adoption of the Act of Congress approved January 31, 1928, as amended by the Act of Congress approved April 26th, 1928, a review could have been had in the United States Supreme Court in this case on writ of error under section 237 of the Judicial Code, as amended, being section 344 of the United States Code Annotated.

Assignment of Errors

And said appellant assigns the following errors in the record and proceedings in said cause:

1. That the said Supreme Court of Minnesota erred in holding that the State of Minnesota had any jurisdiction

or power under the Constitution of the United States to levy or impose a tax upon a privately owned automobile, kept on the Fort Snelling Military Reservation by an officer of the United States Military forces stationed thereon.

2. That the said Supreme Court of Minnesota erred in adjudging and deciding that the motor vehicle registration tax law of Minnesota, (to-wit: sections 2762 to 2704, both inclusive of Mason's General Statutes, 1927, as amended by Chapter 335, Session Laws 1929), insofar as the same is construed to apply to and impose a registration tax upon the said motor vehicle, and the authority exercised under said law, are valid and do not deprive appellant of rights [fol. 30] reserved to him by the Constitution of the United States, notably by the Fourteenth Article of Amendment thereof.

3. That the said Supreme Court of the State of Minnesota erred in affirming and sustaining the judgment of the District Court of Minnesota for the Second Judicial District, dated December 24, 1929, and in not giving to the appellant herein his rights under the Constitution of the United States as claimed and set forth in the record in this case.

For which errors the appellant herein prays that the said final judgment and decision of the Supreme Court of the State of Minnesota, dated May 23rd, 1930, in this cause, be reversed and a judgment rendered in and for said appellant and for costs.

Dated August 15, 1930.

Gynther Storaasli, by Charles Bunn, Pierce Butler, Jr., Charles Bunn, Pierce Butler, Doherty, Rumble, Bunn & Butler, His Attorneys.

[File endorsement omitted.]

[fol. 31] IN SUPREME COURT OF MINNESOTA

[Title omitted]

ORDER ALLOWING APPEAL—Filed Aug. 18, 1930

The petition of Gynther Storaasli for the allowance of an appeal to the Supreme Court of the United States from

the final judgment entered in the above entitled cause on May 23rd, 1930, came on to be heard, accompanied by assignments of error and prayer for reversal in due form, and it appearing that said cause was one in which under the jurisdiction in force when the Act of Congress approved January 31, 1928, as amended by the Act of Congress approved April 26th, 1928, was passed, a review could have been had in the Supreme Court of the United States on Writ of Error, and the Court upon hearing Doherty, Rumble, Bunn & Butler, attorneys for said petitioner, in support of said petition, and having duly considered said matter;

It is hereby ordered that an appeal to the Supreme Court of the United States by said Gynther Storaasli, in the above entitled cause, is hereby allowed, upon the filing of a bond for securing costs to the State of Minnesota in the form presented to this Court in the amount of Five Hundred and no/100 ($500.00) Dollars.

And the Clerk of this Court is hereby ordered to transmit under her hand and the seal of this Court to the Su-
[fol. 32] preme Court of the United States a copy of this Order and of the proceedings had and taken in this cause so that the same shall be received by said Clerk of the Supreme Court of the United States within thirty days from the date of this order.

Dated August 15, 1930.

A. B. Wilson, Chief Justice of the Supreme Court of Minnesota.

[File endorsement omitted.]

[fols. 33 & 34] Bond on appeal for $1,000, approved and filed Aug. 18, 1930, omitted in printing.

[fol. 35] Citation, in usual form, showing service on Henry N. Benson and James E. Markham, filed Aug. 18, 1930, omitted in printing.

[fol. 36] IN SUPREME COURT OF MINNESOTA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Aug. 18, 1930

To Clerk of the Supreme Court of Minnesota:

You will please prepare a transcript of the record in this case to be filed in the office of the Clerk of the United States Supreme Court, pursuant to the appeal heretofore allowed herein, and include in said transcript the following portions of the record in said case in your office, namely:

1. Transcript from District Court, Second Judicial District, Ramsey County, Minnesota, consisting of the following: Notice of Delinquent Motor Vehicle Tax; Answer to Notice of Delinquent Motor Vehicle Tax; Motion for judgment by the State of Minnesota, Substitution of Attorneys; Order for Judgment dated December 5th, 1929; Waiver of Notice of Taxation of Costs; Judgment entered December 24th, 1929, and Notice of Appeal by Gynther Storaasli to Supreme Court of Minnesota.

2. Gynther Storaasli's assignment of Errors of District Court.

3. Opinion and Syl-abus of Minnesota Supreme Court rendered April 25, 1930.

4. Gynther Storaasli's Petition for Re-argument in Minnesota Supreme Court.

[fol. 37] 5. Order of Supreme Court denying Re-argument.

6. Judgment in Minnesota Supreme Court dated May 23rd, 1930.

7. Gynther Storaasli's Petition for Appeal, Assignment of Errors and Prayer for Reversal.

8. Order of Minnesota Supreme Court allowing appeal.

9. Bond on Appeal.

10. Citation and Service.

11. The Præcipe and Service.

Said transcript to be prepared and required by law and the rules of the Supreme Court of Minnesota and the Supreme Court of the United States.

Dated August 18, 1930.

Charles Bunn, Pierce Butler, Jr., Charles Bunn, Pierce Butler, Jr., Doherty, Rumble, Bunn & Butler, Attorneys for Appellant.

We, the attorneys of record for the Appellee in the above entitled cause, do acknowledge due service of the above Præcipe this 18th day of August, 1930.

Henry N. Benson, Attorney General of the State of Minnesota. James E. Markham, Deputy Attorney General for the State of Minnesota.

[File endorsement omitted.]

[fols. 38 & 39] Clerk's certificates to foregoing transcript omitted in printing.

[fol. 40] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF PARTS OF THE RECORD DEEMED NECESSARY FOR THE CONSIDERATION THEREOF—Filed Aug. 27, 1930.

The Appellant herein intends to rely upon the following points in the appeal taken in this case.

I

The State of Minnesota had no jurisdiction or power under the Constitution of the United States to levy or impose a tax upon a privately owned automobile, kept on the Fort Snelling Military Reservation by an officer of the United States Military forces stationed thereon.

II

The motor vehicle registration tax law of Minnesota, to-wit: (Sections 2672 to 2704, both inclusive of Mason's General Statutes, 1927, as amended by Chapter 335, Session Laws 1929), insofar as the same is construed to apply to and impose a registration tax upon said motor vehicle, and the authority exercised under said law, are invalid and deprive appellant of rights reserved to him by the Constitution of the United States notably by the Fourteenth Article of Amendment thereof.

III

The Supreme Court of Minnesota erred in affirming and sustaining the judgment of the District Court of Minnesota [fols. 41 & 42] for the Second Judicial District, dated December 24th, 1929, and is not giving to the appellant herein his rights under the Constitution of the United States as claimed and set forth in the record in this case.

Appellant designates the following parts of the record in this appeal as those which he thinks necessary for consideration of the above mentioned points:

1. All of the record in appeal (No. —) except repetition of titles as transmitted by the Clerk of the Supreme Court of Minnesota to the Clerk of the United States Supreme Court.

Pierce Butler, Jr., Charles Bunn, Attorneys for Appellant, 1006 Merchants Bank Building, St. Paul, Minnesota.

We, the attorneys of record for the Appellee in the above entitled cause, acknowledge due service of the above Statement and Designation this 21st day of August, 1930, and we do stipulate and agree that the record in said appeal may be printed in the manner requested in the within Statement and Designation.

Henry N. Benson, James E. Markham.

[fol. 43] [File endorsement omitted.]

Endorsed on cover: File No. 35,315. Minnesota Supreme Court. Term No. 393. Gynther Storaasli, Appellant, vs. The State of Minnesota. Filed August 27, 1930. File No. 35,315.

FILE COPY

FILED
JAN 2 1931
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 393

GYNTHER STORAASLI, *Appellant,*

vs.

THE STATE OF MINNESOTA, *Appellee.*

MOTION TO ADVANCE

PIERCE BUTLER, JR.,
CHARLES BUNN,
Counsel for Appellant.
HENRY N. BENSON,
Attorney General of Minnesota,
JAMES E. MARKHAM,
Deputy Attorney General,
Counsel for Appellee.

LABEAU BRIEF CO., 612 COURT BLOCK, ST. PAUL

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 397

GYNTHER STORAASLI, *Appellant,*

vs.

THE STATE OF MINNESOTA, *Appellee.*

MOTION TO ADVANCE

The parties to this appeal hereby respectfully petition the court to advance this cause upon the docket for hearing upon oral argument at such early date as may meet the convenience of the court. Briefly stated, the pertinent facts are these:

The constitution of the state of Minnesota, as amended in 1920, permits the legislature to provide for the taxation of motor vehicles using the public highways of the state on a more onerous basis than other personal property, the motor vehicle tax, however, to be in lieu of all other taxation of such vehicles. The proceeds of such tax are required to be paid into a special fund devoted to the construction and maintenance of state highways.

Minnesota Constitution, Article 16, Section 3.

Automatic Signal Company v. Babcock, 166 Minn. 416.

The legislature of the state, pursuant to the authority conferred by the constitution as thus amended, adopted chapter 461, Laws 1921, imposing, subject to certain exemption, a specified tax upon all motor vehicles using the public streets or highways of the state, but in lieu of other taxation thereon. The exemption includes vehicles owned and used in the transaction of official business by representatives of foreign powers, by the federal government, the state or any of its political subdivisions, and certain specified threshing machines, farm tractors and other implements of husbandry temporarily moved upon the highway.

This legislation has been sustained as against an attack upon the constitutionality of its provisions.

Dohs v. Holm, 152 Minn. 529.

The statute has been amended from time to time and its provisions in substance are to be found in chapter 13, compiled laws. The prescribed tax accrues on the first day of January of each year.

General Statutes 1923, Section 2690.

This is a proceeding instituted by the registrar of title for the collection of motor vehicle tax claimed to be due from the defendant on account of his ownership and operation of a motor vehicle during the year 1929. The appellant answered in the tax proceedings and resists the enforcement of the tax upon the ground, among others, that he is a nonresident of the state, a commissioned officer of the United States army stationed on the Fort Snelling reservation, in Minnesota, that the vehicle sought to be taxed, while used

by him for his personal convenience, is driven chiefly upon the military roads within the reservation and only occasionally upon Minnesota highways, that the military reservation is a territory solely and exclusively under the control of the government of the United States, that all governmental functions, including the exercise of the police power, traffic control and maintenance of highways, are vested in and exercised by the commanding officer of the reservation under the laws of the United States to the total exclusion of the governmental control of the state, of which it is not a part, that the commanding officer, in pursuance of the power vested in him, has established a complete system of motor vehicle registration within the reservation, and that the vehicle here sought to be taxed has been properly registered in accordance with such laws and regulations, including the issuance thereto of proper number plates which are displayed thereon when the vehicle is in use upon the highways of the reservation and upon the highways of the state, and in effect that because of these things the appellant is privileged to drive his vehicle occasionally upon Minnesota highways pursuant to a special provision in the Minnesota motor vehicle tax law—*General Statutes* 1923, Section 2684—providing in effect that motor vehicles temporarily within the state, owned by nonresidents, properly registered under the laws of the country or the state of the owner, and carrying number plates according to laws of such state, may make temporary use of Minnesota highways without payment of the tax or license fee prescribed by that act. There is the broader contention on the part of the appellant that

as construed by the supreme court of Minnesota the statute imposing this tax is invalid because discriminatory and in violation of the fourteenth amendment to the constitution of the United States.

Upon a hearing in the trial court judgment was given against the defendant for the amount of the tax. The defendant appealed to the supreme court of the state, where the judgment was affirmed. The decision is not officially reported.

State v. Storaasli, 230 N. W. 572.

The vehicle owned by the defendant and taxed in this proceeding is but one of a large number of motor vehicles owned by the officers and men of the garrison stationed at Fort Snelling and against which proceedings for the enforcement of a motor vehicle tax by the state for the year 1929, and again for the year 1930, are now pending, and enforcement proceedings therein have been stayed awaiting the final decision in the case at bar.

The right of the state to impose a substantially similar tax upon vehicles owned and used for their personal use by officers and men employed in the military service and stationed at other military posts throughout the country is raised and pending in other jurisdictions.

See—

Bailey v. Smith, 40 Fed. (2) 958.

The Minnesota laws impose a penalty in a substantial amount for the nonpayment of a motor vehicle tax within

a specified time after it has accrued. Assuming the right to tax the vehicle in question and those belonging to the other officers and men of the garrison, penalties in substantial amounts have become imposed because of the nonpayment by these officers and men of the tax upon their vehicles for the years 1929 and 1930, and penalties will also accrue upon the amount of the annual tax which will accrue on the first day of January of next year.

The orderly enforcement of tax proceedings in Minnesota, as applied to motor vehicle taxes, and the completion of the records of the registrar, will be facilitated by an early decision of this case, and too the appellant and the other officers and men of the command at Fort Snelling, if the right to tax is sustained, will be able to pay the imposed tax without additional penalties which might otherwise accrue.

WHEREFORE, and for the reasons stated, your petitioners pray that the case be advanced upon the calendar and assigned for hearing at an early date.

Respectfully submitted,

PIERCE BUTLER, JR.,
CHARLES BUNN,
Counsel for Appellant.

HENRY N. BENSON,
Attorney General of Minnesota,
JAMES E. MARKHAM,
Deputy Attorney General,
Counsel for Appellee.

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FILED
SEP 26 1930
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 393.

GYNTHER STORAASLI,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

STATEMENT SHOWING BASIS OF JURISDICTION AS REQUIRED BY RULE 12.

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Supreme Court of the United States

OCTOBER TERM, 1930.

No. 393.

GYNTHER STORAASLI,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

STATEMENT SHOWING BASIS OF JURISDICTION AS REQUIRED BY RULE 12.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Appellant, Gynther Storaasli, in support of the jurisdiction of this Court to review the above entitled cause on appeal respectfully represents and states to the Court:

This appeal is taken from the judgment entered in the Supreme Court of the State of Minnesota May 23rd, 1930, in favor of the State of Minnesota and against the Appellant, Gynther Storaasli.

(a). Statutory Provision sustaining the Jurisdiction of This Court.—This appeal is taken under Sections 861 (a), and 861 (b), of Title 28 of the United States Code, as amended

April 26th, 1928, and under Rule 46 of the Rules of this Court effective July 1, 1928. Under the practice previous to the amendments, Writs of Error would have been issued under Section 237 of the Judicial Code as amended, being Section 244, Title 28 of the United States Code.

(b). Dates of Judgment Sought To Be Reviewed And On Which Application For Appeal was Presented.—The decision of the Supreme Court of Minnesota was filed April 25th, 1930, (R. page 16-20). ** Application for rehearing was filed on May 12, 1930 (R. page 21-25). This application was denied May 23rd, 1930 (R. page 26). Judgment was entered in the Supreme Court of Minnesota May 23, 1930 (R. page 27).

The application for appeal therefrom was presented and the order allowing the appeal entered August 15, 1930 (R. page 28-29). The citation was issued and served on August 16th, 1930 (R. page 33)..

(c). Nature of Case and Rulings of The Minnesota Supreme Court.—The question presented by this appeal is whether the State of Minnesota can without violating the Constitution of the United States, notably the Fourteenth Article of Amendment thereof, impose a motor vehicle registration tax upon a privately owned motor vehicle kept on the Fort Snelling Military Reservation by an officer of the United States military forces stationed thereon.

The provisions for the imposition and the determination of the motor vehicle registration tax are found in Sections 2672 to 2704 inclusive, as amended by Chapter 335, Session Laws of Minnesota, 1929 (See appendix p. 19). These provisions

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NOTE:

**The record has not as yet been printed. All references herein to the record refer to the pages of the original record as prepared by the Clerk of the Minnesota Supreme Court.

were enacted by the Legislature of the State of Minnesota pursuant to an amendment of the Constitution of the State being Article 16, which provides for the establishment of a Trunk Highway system throughout the State. The pertinent portion of that Amendment in the consideration of this case is section 3, which provides as follows:

> "Taxation of motor vehicles—The legislature is hereby authorized to provide, by law, for the taxation of motor vehicles, using the public streets and highways of this state, on a more onerous basis than other personal property; provided, however, that any such tax on motor vehicles shall be in lieu of all other taxes thereon, except wheelage taxes, so-called, which may be imposed by any borough, city or village. Any such law may, in the discretion of the legislature, provide for the exemption from taxation of any motor vehicle owned by a non-resident of the state, and transiently or temporarily using the streets and highways of the state. The proceeds of such tax shall be paid in to said trunk highway sinking fund."

The Secretary of State, pursuant to Chapter 335 Laws of Minnesota, 1929 (See appendix p. 19), filed in the office of the Clerk of the District Court of Ramsey County a list of motor vehicles on which the tax and penalty for 1929 appeared delinquent. The Appellant's vehicle was included in this list. Within the proper time the Appellant filed his answer to the notice of the delinquent motor vehicle tax. The answer denied that any tax or penalty was due the State of Minnesota (R. pages 3-6).

It then alleged that at all times covered by said notice the defendant has been and now is the sole owner of the motor vehicle; that he now is and at all times covered by said notice was a non-resident of the State of Minnesota and a member of the military forces of the United States quartered and resident

upon the United States Military Reservation at Fort Snelling; that the motor vehicle of the defendant has not been operated for hire, nor has it been present within the jurisdiction of the State of Minnesota upon its roads, highways, or streets, for any period of ten days; that it is not now operated on the roads, highways or streets of the State except as a visitor for brief periods (R. pages 3-4).

It is then alleged that the Fort Snelling Military Reservation is and was a territory solely and exclusively under the control of the Government of the United States; that all governmental functions, including police power, traffic control and maintenance of highways, are vested in and exercised by the Commanding Officer of the Reservation under the laws of the United States to the total exclusion of the governmental control of the State; that the Reservation is not a part of the State of Minnesota (R. pages 4-5).

The answer further alleges that the Commanding Officer of the Reservation has created and maintained, in pursuance of the power vested in him, a complete system of automobile registration with rules and regulations, and that the motor vehicle which is the subject of this litigation has been duly and properly registered under such laws and regulations; that it has been provided with license plates and a registration certificate issued therefor (R. page 5).

The defendant also alleges that he is willing to comply with all the laws of the State of Minnesota applicable to non-residents whenever non-residents have occasion to use the roads and public streets, and has notified the proper officers of the State, through the Registrar of Motor Vehicles at the Reservation of his readiness to comply therewith; that he has at all times carried the proper plates issued to him, and has complied with all the traffic laws and regulations of the State when

he has operated the motor vehicle upon the highways of the State (R. pages 5-6).

Upon filing the answer, the plaintiff moved for judgment on the pleadings (R. page 7). The motion was granted (R. pages 9-10). Judgment was thereupon entered for the tax and penalty (R. p. 11). From this judgment Appellant appealed to the Supreme Court of Minnesota (R. page 12).

The Supreme Court affirmed the judgment of the District Court (R. pages 16-20). An application for rehearing was made by the Appellant (R. pages 21-25). This was denied May 23, 1930 (R. page 26). Judgment was entered the same date (R. page 27) from which the appeal to this Court was taken August 15, 1930. The judgment appealed from was final so far as the State Courts are concerned.

The Supreme Court in affirming the judgment of the District Court stated:

> "The license tax is both a property tax and a privilege tax * * * is a property tax in the same sense that it exempts the vehicle licensed from other taxation or property. It is in lieu of other taxes. But it is equally clear that it is a privilege tax. All motor vehicles, with the exception hereinafter noted, are prohibited from using the public highways until the tax is paid. It is a tax imposed for the privilege of using the public highways of the State and collected for the specific purpose of building and maintaining such highways. The elements of property tax and privilege tax are inseparable. * * * The character of a privilege tax extends to the whole tax. So does the character of a property tax. As a property tax it could not be imposed against visitors from other States whose automobiles have not a situs for taxation in this State. Yet it may be and is so imposed, except that visitors who, within ten days after entering the State or commencing to use the highways, register their automobile with the Secre-

tary of State showing that the car is properly registered and licensed under the laws of the Country or State of the owner, may use the highways of the State for a period of not more than ninety days without payment of the tax. It is so imposed on non-residents as a privilege tax" (R. pages 18-19).

The Court further held:

"It is stated, but not much argued, that if construed as claimed by plaintiff, the law is discriminatory and violates the equality provision of the Fourteenth Amendment. We see no objection to the law on that ground" (R. page 20).

Thus the Federal questions presented by the Assignments of Error in the appeal now before this Court, whether the motor vehicle registration tax law, insofar as the same is construed to apply to and impose a tax upon a privately owned automobile, kept on the Fort Snelling Military Reservation by an officer of the United States Military forces stationed thereon, and the authority exercised under said law, are invalid and deprive appellant of his rights under the Fourteenth Amendment were raised at the commencement of this proceeding, and were presented and passed on by the Supreme Court of Minnesota, and were determined adversely to the Constitutional rights claimed.

(a). Cases sustaining the Jurisdiction:

Surplus Trading Co. v. R. A. Cook, United States Adv. Opin. No. 14-626, dec. June 2, 1930.

Hendrick v. Maryland, 235 U. S. 610.

Kane v. New Jersey, 242 U. S. 160.

Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 265.

In the case of *Surplus Trading Company v. Cook*, the court assumed jurisdiction on a Writ of Error to the State Court under the former procedure to determine whether a personal

property tax law as construed and applied by the highest court of the state is valid under the Constitution of the United States. In the cases of *Hendrick v. Maryland* and *Kane v. New Jersey* (supra) the Court has assumed jurisdiction on a writ of error to the State Court under the former procedure to determine whether a state motor vehicle registration law as construed and applied by the highest court of the state is valid under the Constitution of the United States ,and particularly the Fourteenth Amendment thereof.

In the case of *Farmers Loan & Trust Company v. Minnesota*, supra, the court has asumed jurisdiction on appeal under the new procedure to determine whether an inheritance tax law as construed and applied by the highest Court of the State is valid under the Constitution of the United States, and particularly the Fourteenth Amendment thereof. These cases are therefore authorities sustaining the jurisdiction of the Court in the present case. However, neither the *Hendrick v. Maryland*, NOR the *Kane v. New Jersey* case (supra) passed upon the exact question involved in this case. The appellant herein claims two definite discriminations. Under the Constitution of the State of Minnesota, appellant is a non-resident of Minnesota (Article VII., Sec. 4). The taxation of motor vehicles using the public streets and highways of the State of Minnesota is on a more onerous basis than other personal property (Article 16, see 3 supra).

Under the opinion filed by the Supreme Court of Minnesota, it was definitely held that the tax against the vehicle could be enforced as a tax on the privilege of using the roads of Minnesota. It is conceded in this case by the Supreme Court of Minnesota that it cannot be a property tax, so that as to your petitioner the whole tax is for the privilege. But as to residents of Minnesota owning cars within the State and who are subject

to general property taxation, this same payment pays a tax upon the cars as property "on a more onerous basis than other personal property," and also gives them the privilege of using the roads. By the enforcement of this tax to the full extent as against the resident of the Military Reservation, wholly as a privilege tax, the State of Minnesota singles out such residents and taxes them at a higher rate for the privilege of using the roads of the State of Minnesota than it does its own residents. This is one discrimination.

Residents of Iowa, the Dakotas or Wisconsin living near the boundary line may drive their cars in Minnesota every day, without paying any tax at all, provided only that their cars are not within the State for any continuous period of ninety days. But under this decision a resident of the Fort Snelling Reservation, who drives his car within the State *at all*, must pay the total tax. This is certainly a most important difference of treatment which appellant claims is discrimination.

The Court has recognized these distinctions. It said in *Hendrick v. Maryland*, supra, at page 621:

> "If the statute is otherwise valid, the alleged discrimination against residents of the District of Columbia is not adequate ground for us now to declare it altogether bad. At most they are entitled to equality of treatment, and in the absence of some definite and authoritative ruling by the courts of the State, we will not assume that upon a proper showing this will be denied."

In this case the Supreme Court of Minnesota has by authoritative ruling denied to appellant equality.

A careful reading of *Kane v. New Jersey*, supra, indicates a recognition of the distinction to be made in this case. In speaking of the reasonableness of the New Jersey law it stated that it put non-resident owners upon an equality with resident

owners. Under the decision of the Supreme Court of Minnesota appellant is not given that equality of treatment. He is not on an equality with residents of Iowa, the Dakotas or Wisconsin, nor is he on an equality with the residents of Minnesota.

Respectfully submitted,

CHARLES BUNN,
PIERCE BUTLER, JR.,
Attorneys for Appellant.

DOHERTY, RUMBLE, BUNN & BUTLER,
Counsel.

APPENDIX.

MOTOR VEHICLES.

Sec. 2674. Rate of tax—(a). Motor vehicles, except as set forth in Section 2 hereof, using the public streets or highways in the State of Minnesota shall be taxed in lieu of all other taxes thereon, except Wheelage taxes, so-called, which may be imposed by any borough, city or village, as provided by law, and shall be privileged to use the public streets and highways, on the basis and at the rates for each calendar year as follows:

Motor vehicles for carrying passengers and hearses, 2 4/10% of value.

Provided that the minimum tax on all passenger motor vehicles under 2,000 pounds weight except as hereinafter provided shall be $10.00 and the minimum tax on all passenger motor vehicles 2,000 pounds and over in weight shall be $12.50.

* * * * *

Value until the end of the first calendar year of vehicle life, construing the year of the model designation as the first year of such life shall be construed to mean the "base price for taxation" as hereinafter defined.

For the purpose of fixing a base price for taxation from which depreciation in value at a fixed per centum per annum can be computed, such price is defined as follows:

The base price for taxation of a motor vehicle of which a similar or corresponding model, as defined in Section 21 of this act, was being manufactured on November 1st, preceding the year for which the tax is levied, shall be the manufacturers' list price of such similar or corresponding model in effect on such November 1st. The base price for taxation of a motor vehicle of which no such similar or corresponding model was

manufactured until after such November 1st shall be the manufacturers' list price at the factory when the vehicle taxed was first manufactured. The base price for taxation of a motor vehicle of which no such similar or corresponding model has been manufactured since a time prior to such November 1st shall be the price fixed by the registrar as a reasonable manufacturers' list price at the factory on such November 1st if such vehicle has been then manufactured at prevailing costs.

Value during each succeeding year of vehicle life shall be construed to mean such base price for taxation, less ten per cent for the second year, less twenty per cent for the third year, less thirty per cent for the fourth year, less forty per cent for the fifth year, less fifty per cent for the sixth year, less sixty per cent for the seventh year, and less seventy per cent for the eighth and each subsequent year.

When a motor vehicle shall become first subject to taxation between July 31st, and October 1st, the tax for the remainder of the calendar year shall be one-half the tax for a whole year.

When a motor vehicle shall become first subject to taxation after September 30th and on or before December 31st, the tax for the remainder of the calendar year shall be one-fourth the tax for a whole year.

* * * * *

(c) The owner of every motor vehicle, not exempted by section 2, or 14, shall so long as it is subject to taxation within the state, list and register the same and pay the tax herein provided annually, provided, however, that any dealer in motor vehicles to whom dealer's plates shall have been issued as herein provided, shall, upon due application on the date set for the annual renewal of registration and payment of tax, be entitled to withhold the tax upon any motor vehicle held by him solely for the purpose of sale or demonstrating or both and upon

which the tax as a user of the public highways, shall become due, until the motor vehicle shall be sold or let for hire to a person not such a dealer, or until used upon the public highways, but no longer than until October 1st, following, when the whole tax shall become immediately payable with all arrears.

* * * * *

(e) The proceeds of the tax imposed on motor vehicles under this act shall be collected by the registrar of motor vehicles and paid into the state treasury and credited to the Trunk Highway Sinking Fund.

* * * * *

Sec. 2675. Motor vehicles to be registered—Operation without registration prohibited—Purchasers of new vehicles—No motor vehicle, except as is exempted by Section 2 of this act, shall use or be operated upon the public streets or highways of the State of Minnesota in any calendar year until it shall have been registered as hereinafter required, and the motor vehicle tax and fees herein provided shall have been duly paid and the "number plates" issued therefor shall be duly displayed on such vehicle. No motor vehicle, except as provided by Section 2 of this act, which shall for any reason not be subject to taxation as herein provided shall use or be operated upon the public streets or highways of this state until it shall have been duly registered as herein provided, and shall duly display number plates as required by the provisions of this act, except that the purchaser of a new motor vehicle may operate his motor vehicle without plates, provided that:

* * * * *

Sec. 2676. Owner shall list—(a) Every owner of any motor vehicle in this state, not exempted by Section 2 or Section 14 hereof, shall on or before February 15th, in each calendar year and in any event as soon after January 1st as he shall

become the owner thereof, file with the registrar on a blank provided by him, a listing for taxation and application for the registration of such vehicles, stating the name and address of the owner, and the nature of his ownership, the name and address of the person from whom purchased, name of manufacturer, name of motor-vehicle, year manufactured, year and number of the model, engine and car number, type of body, the list price thereof at the factory, the weight of the vehicle in pounds, and its rated load carrying capacity or seating capacity, the number of cylinders, and such other informations as the registrar may require. The said owner shall make an oath or affirmation before some officer authorized by law to administer oaths or affirmations that the statements made are correct and true; and any false statement wilfully and knowingly made in regard thereto shall be deemed perjury and punished accordingly; provided, however, that such listing for taxation and application for registration need not be sworn to when the applicant is listing the same vehicle for taxation and registration for the second or any succeeding time. The listing and application for registration by dealers or manufacturers' agents within the state, of motor vehicles received for sale or use within the state shall be accepted as compliance with the requirements of this act imposed upon the manufacturer.

* * * * *

Sec. 2684. Passenger motor vehicles from other states—Use of streets and highways for three months—Registration—Certificates—Display—Penalty for non-registration—Other penalties—Passenger motor vehicles not employed for hire within the state, owned by non-residents and which have been properly registered or licensed under laws of the country or state of the owner, and which carry license number plates according to the laws of such state, and which are accompanied by the

registration certificate (if any) used therefor by such state, in the possession of the owner or his agent, may use the public streets and highways of this state for a period no longer than three months in any calendar year without further tax; provided, however, that a non-resident owner of a motor vehicle so registered in such other country or state shall, not later than ten days after commencing to operate said vehicle, or to cause or permit the same to be operated, on any public highway within this state, apply to the registrar for registration of such vehicle; and shall state in addition to such other matters as may be required by the registrar, the name and postoffice and residence address of the applicant, together with the registration number of said vehicle in the country or state in which the same shall be registered. Upon receipt of said application, the registrar, if satisfied of the facts stated therein, shall, without charge to the applicant, register said motor vehicle and furnish to the applicant a non-resident's registration certificate, indicating that the holder thereof has complied with the requirements of this act.

Such certificate shall contain the name and address of the owner, a description of the vehicle by name and distinguishing numbers, the date of registration and of expiration, with such other appropriate matter as the registrar may insert therein, and during operation of such vehicle upon Minnesota highways shall be conspicuously displayed upon the windshield of the vehicle.

If the non-resident owner delays for more than ten days to make application for such non-resident's registration certificate, a penalty shall accrue at the rate of $1.00 per month or fraction thereof for such delay and the registrar shall not issue a certificate until such penalty is paid.

Such certificate shall expire when such vehicle passes into the ownership of a resident of the state, and in any event, after three months from the date when such vehicle was first brought into the state, or when the owner thereof, becomes a resident of the state.

A passenger motor vehicle not employed for hire and owned by a non-resident on the first day that it is in the state, after a period of three months has elapsed since it was first brought into the state, shall become subject to the same provisions of law governing registration and payment of tax and penalty as apply to such a motor vehicle owned by a resident of the state, and if no non-resident's registration certificate shall have been procured as provided by this act, the penalty provided for delay in securing such certificate shall also be paid before registration can be made.

Any person who shall use such certificate displayed upon a motor vehicle other than the one described therein while in use on Minnesota highways, or on any motor vehicle on Minnesota highways after the time limited therein has expired, shall be guilty of a misdemeanor.

Sec. 2684-1. Reciprocal rights and privileges of motor vehicles from adjoining states and Canadian provinces—Conditions and limitations—Any citizen of an adjoining state or an adjoining Canadian province, who owns and is duly licensed under the laws of his own state or country to operate a motor vehicle upon the highways thereof, may also operate such motor vehicle personally or by his authorized driver upon the streets and highways of townships, boroughs, villages and cities in this state, subject to the following conditions and limitations:

First. Upon condition that any citizen of this state, who owns and is fully licensed under the laws of this state to oper-

ate a motor vehicle upon the highways thereof, shall also be privileged to operate such motor vehicle tax free upon the streets and highways of such adjoining state or Canadian province under conditions substantially as favorable to any such Minnesota citizen as the conditions herein specified for the operation in this state of the motor vehicle of any similarly situated citizen and resident of such adjoining state or Canadian province.

Second. Upon condition that any such motor vehicle so operated in this state by any such nonresident at all times shall carry and display all license number plates or like insignia required by the laws of the home state or country of said non-resident.

Third. Upon condition that such non-resident motor vehicle owner shall first file with the registrar of motor vehicles in this state an instrument in writing, subscribed by him and duly acknowledged before a notary public or other officer with like authority, setting forth the name and address of the owner and of each person having any interest in such motor vehicle, the name and address of the person from whom such motor vehicle was purchased or acquired, the name of the manufacturer and of the motor vehicle if it has a name, the year when manufactured, the serial number or other number and model identifying such motor vehicle, the weight in pounds of such motor vehicle, and the number of cylinders of the motor engine. Said written instrument shall also contain substantially the following:

"The undersigned owner of the above described motor vehicle hereby consents and agrees that the use and operation of said motor vehicle inside the state of Minnesota shall always be subject to all the laws, ordinances, rules and regulations applicable to like operation thereof by a citizen and resident

of the state of Minnesota except as it may be expressly provided otherwise by the laws of Minnesota. The undersigned owner hereby consents to be sued or otherwise proceeded against, either civilly or criminally, at any place in Minnesota where the above described motor vehicle is operated, upon any claim or cause of action arising from such operation, in the same manner as a Minnesota citizen and resident owner and operator of a like motor vehicle might be sued or proceeded against in like circumstances. And in any such civil proceeding, legal process and other notices or papers may be served upon the undersigned owner of the above described motor vehicle by depositing a copy thereof in the United States mails, properly enveloped, sealed, postage prepaid, and addressed to the undersigned owner at his above stated address or at such other address as he may have later filed in writing supplementary to this agreement. Such service shall be deemed personal service, and shall have the same force and effect as like process or notice served personally upon a motor vehicle owner residing in and being a citizen of the state of Minnesota."

Sec. 2684-2. Same—Certificates issued to such vehicles—Fee for seizure of vehicles operating without certificates—Vehicles not included—As soon as any non-resident motor vehicle owner entitled to the privileges herein extended, shall have complied with the provisions hereof, the registrar of motor vehicles shall issue to him a certificate stating that he is entitled to operate such motor vehicle within this state for and during such time as he continues to own such motor vehicle with license to operate the same in his own state or country; but subject, nevertheless, to suspension, revocation, or cancellation for any cause that would justify similar action with respect to any motor vehicle license or registration issued

to any citizen or resident of this state. For each such certificate the registrar of motor vehicles shall charge one dollar, which shall be paid into the state treasury and credited to the general revenue fund. Within ten days from the date when any change shall have been made in the ownership, or foreign license or number plates, of any motor vehicle operating in this state under a certificate as above provided, said certificate shall be surrendered to the registrar of motor vehicles, and such change shall be noted thereon, or a new certificate issued under the same conditions as the original, and a like charge of one dollar shall be collected in either case. Such certificates shall be prima facie evidence that the motor vehicle described may be lawfully operated in this state.

Any foreign motor vehicle operating at any time without such certificate shall be subject to seizure and the driver thereof to arrest by any law enforcing officer of this state; and upon conviction of such driver for operating in this state without licen e such motor vehicle may be sold in the same manner as on execution sale for debt and the proceeds may be applied to satisfy any penalty or fine imposed and to pay any costs or expens s incurred in connection with such arrest, seizure and sale. But this provision shall not apply to any foreign motor vehicle operated for a limited time in this state under Section 13 of Chapter 461, Laws 1921 (as amended by Chapter 418, Laws 1923, as amended by Chapter 299, Laws 1925) or any similar provisions of law hereafter enacted.

Sec. 2687. All machines must be registered—Exceptions—Every motor vehicle (except those exempted in Section 2 of this act) shall be deemed to be one using the public streets and highways and hence as such subject to taxation under this act if such motor vehicle has since April 23, 1921, used such

public streets or highways, or shall actually use them, or if it shall come into the possession of an owner other than as a manufacturer, dealer, warehouseman, mortgagee or pledgee.

* * * * *

Chapter 335—Session Laws Minnesota, 1929.

Sec. 1. Registrar to file statement of delinquents with clerk of court—Section 2691, General States 1923, is hereby amended so as to read as follows:

"2691. As soon as practicable after the first day of April in each year, the registrar shall prepare a list containing the names of owners of motor vehicles previously registered and upon which the tax for the current year has not been paid and concerning which there is not satisfactory report explaining such non-payment, and demand payment from each by letter. When deemed necessary, and for the purpose of obtaining more complete information concerning the probable success of enforcement proceedings as to those who do not respond to such notice, the registrar may assign to one or more employees in the motor vehicle department the duty of personal investigation in such counties in which the information at hand is not sufficient to enable him to determine whether payment of the tax due from any owner named in the list can be enforced, and the reasonable traveling expenses of these investigators shall be paid as department maintenance.

The preliminary investigation and reports herein prescribed are intended to enable the registrar to exclude from the delinquent list to be prepared and presented in accordance with the next succeeding paragraph the names of owners who cannot be found or whose vehicles are stolen, destroyed by the elements, or dismantled before the first day of the current year and to include therein only the names of delinquents from whom payment can probably be enforced.

Failure to comply with any of these provisions shall not affect the validity of the tax or the means of enforcement, nor shall the tax on any vehicle omitted from the delinquent list according to the provisions of this section be waived or the enforcement thereof impaired if at a later date application is made for re-registration and it is discovered that taxes are due in arrears.

The registrar on the second Monday in July next after any tax herein provided for shall become delinquent and on or before the tenth secular day of each subsequent month of the year shall certify to and file with the clerk of the district court of the proper county, a statement of delinquent taxes imposed under the provisions of this act, and not excluded therefrom as uncollectible, and such certified statement so filed shall be prima facie evidence of the correctness of the tax or taxes therein stated to be delinquent. Immediately upon receipt of this list the clerk shall mail written notice to each owner whose name appears therein, in form to be prescribed by the registrar, stating in substance that the list has been filed and that, as indicated thereon, there is imposed against him a tax in the amount stated due from such addressed owner and demanding immediate payment thereof. On or before the tenth secular day next after the filing of this list, any owner whose name is included in such certified statement may file with the clerk of said court an answer verified as pleadings in civil actions, setting forth his defense or objections to the tax or penalty against him.

The notice herein required to be mailed by the clerk to the respective owners is intended as an aid to securing payment of the motor vehicle tax and failure to send such notice or the failure of the registered owner to receive it shall not affect the tax or impair proceedings for its enforcement. On the

reverse side of the clerk's notice shall be a blank form of answer which the owner may make and return to the clerk stating any defense he may have to proceedings for the enforcement of the payment of the tax indicated therein, but if this blank form does not fully provide for the conditions of any particular case the answer need not follow the form, but shall clearly refer to the tax or penalty intended to be contested, and shall set forth in concise language the facts constituting the defense or objection of the owner to such tax or penalty.

The clerk shall submit to the county attorney the answers received with such particular information affecting each case as he shall have received in response to his notice or otherwise, and the county attorney therefrom and from such other information as the clerk shall submit therewith, and from such information as he may otherwise obtain, shall report in writing by mail to the registrar the names of owners on the delinquent list filed with the clerk from whom, in his judgment, payment of the indicated mofor vehicle tax cannot be collected. Upon receipt of such report the registrar may strike from the delinquent list the names of all persons against whom, in his judgment based upon the information he has at hand, payment of the indicated tax cannot be enforced, and shall report such eliminated names to the clerk, who shall also strike them from the delinquent list on file in his office and dismiss the proceedings against the owner whose name is thus eliminated. In all other cases the issues raised by such answer shall stand for trial at any term of the court in such county in session when the time to file answer shall expire, or at the next general or special term appointed to be held in such county; and, if no such term be appointed to be held within thirty days thereafter, then the same shall be brought to trial at any gen-

eral term appointed to be held within the judicial district, upon ten days' notice. The county attorney of the county within which such taxpayer resides shall prosecute the same. At the term at which such proceedings come on for trial they shall take precedence over all other business before the court. The court shall without delay and summarily hear and determine the objections or defense made by the answers and at the same term direct judgment accordingly, and in the trial shall disregard all technicalities and matters of form not affecting the substantial merits. If the taxes and penalties shall be sustained, the judgment shall include costs.

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CHARLES ELMORE

IN THE

Supreme Court of the United States

No. 393.

GYNTHER STORAASLI,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

BRIEF FOR THE APPELLANT, GYNTHER STORAASLI.

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BRIEF FOR THE APPELLANT, GYNTHER STORAASLI.

OPIONION BELOW.

The opinion of the Supreme Court of Minnesota is reported in 180 Minn. 241, 230 N. W. 572.

JURISDICTION.

The opinion of the Supreme Court of Minnesota was entered on April 25, 1930 (R. 9). The order denying the petition for reargument was entered May 23, 1930 (R. 15). The judgment was entered May 23, 1930 (R. 16). Petition for appeal was filed August 18, 1930 (R. 16), and notice of probable jurisdiction was given on November 3, 1930, under the provisions of

Sections 861 (a) and 861 (b) of Title 28 of the United States Code, as amended April 26th, 1928, and under Rule 46 of the Rules of this Court effective July 1, 1928.

THE QUESTIONS PRESENTED.

1. Do the provisions of Sections 2674-76, 2684, 2684-1, 2684-2, 2687 and 2691 of the General Statutes of Minnesota, 1927, as amended Laws 1929, Chapter 335, as applied to an automobile owned, kept and operated on the United States Military Reservation at Fort Snelling, Minnesota, by an officer of the United States Army stationed thereon, constitute a tax on the property of such officer so as to deny him due process of law under the provisions of Article XIV of the amendments to the Constitution of the United States?

2. Do the provisions of the statute as applied to such an automobile constitute an unfair discrimination against such an officer in favor of residents of Minnesota by imposing on him a greater burden for the privilege of using the highways of the State than is imposed upon residents of Minnesota, so as to deny him the equal protection of the laws under the provisions of Article XIV of the amendments to the Constitution of the United States?

3. Do the provisions of this statute as applied to such an automobile constitute an unfair discrimination against such an officer in favor of residents of neighboring States by imposing on him a greater burden for the privilege of using the highways of the State than is imposed upon residents of neighboring States, so as to deny him the equal protection of the laws under the provisions of Article XIV of the amendments to the Constitution of the United States?

STATUTES INVOLVED.

The principal statutes involved are set forth in an appendix to the Statement Showing Basis of Jurisdiction. They are Sections 2674-76, 2684, 2684-1, 2684-2, 2687 and 2691 of the General Statutes of Minnesota, 1927, as amended Laws 1929, Chapter 335.

STATEMENT.

By Chapter 57 of the General Laws of Minnesota of 1889, the State of Minnesota ceded to the United States jurisdiction of the territory constituting the Fort Snelling Military Reservation. The cession was on one condition—that the public highways across the reservation be kept open for public travel—and contained two reservations: (1) Concurrent jurisdiction to serve process, civil and criminal, of the State, and (2) Concurrent jurisdiction to arrest persons charged with crime against the laws of the State. There was no other limitation on the cession. The Reservation is still occupied by the military force of the United States and jurisdiction of it has been exercised by the Federal government to the exclusion of the State ever since the Act of Cession. The power of government is vested in the commanding officers of the Military Forces, subject to the Acts of Congress and Orders of the War Department (R. page 2).

Section 4 of Article 7 of the Constitution of Minnesota provides that a member of the military forces of the United States shall not be deemed a resident of the State in consequence of being stationed within the same.

Article 16 of the amendments to the Constitution of Minnesota provides for the establishment of a trunk highway system throughout the State. Section 3 thereof reads as follows:

"Taxation of motor vehicles—The legislature is hereby authorized to provide, by law, for the taxation of motor vehicles, using the public streets and highways of this state, on a more onerous basis than other personal property; provided, however, that any such tax on motor vehicles shall be in lieu of all other taxes thereon, except wheelage taxes, so-called, which may be imposed by any borough, city or village. Any such law may, in the discretion of the legislature, provide for the exemption from taxation of any motor vehicle owned by a non-resident of the state, and transiently or temporarily using the streets and highways of the state. The proceeds of such tax shall be paid in to said trunk highway sinking fund."

In pursuance of this Article, the State Legislature enacted a statute providing for the imposition of a motor vehicle registration tax (Sections 2672 to 2704 incl. General Statutes Minnesota 1927, as amended Session Laws 1929, Chapter 335. See pp. 19 et seq. of Statement of Probable Jurisdiction). Pursuant to this statute, the Secretary of State filed in the office of the Clerk of the District Court of Ramsey County a list of motor vehicles on which the tax and penalty for 1929 appeared delinquent. The Appellant's vehicle was included in this list. Within the proper time the Appellant filed his answer to the notice of the delinquent motor vehicle tax. The answer denied that any tax or penalty was due the State of Minnesota (R. pages 1-2).

It then alleged that at all times covered by said notice the defendant has been and now is the sole owner of the motor vehicle; that he now is and at all times covered by said notice was a non-resident of the State of Minnesota and a member of the military forces of the United States quartered and resident upon the United States Military Reservation at Fort Snelling; that the motor vehicle of the defendant has not been operated

for hire, nor has it been present within the jurisdiction of the State of Minnesota upon its roads, highways, or streets, for any period of ten days; that it is not now operated on the roads, highways or streets of the State except as a visitor for brief periods (R. page 2).

It then alleged that the Fort Snelling Military Reservation is and was a territory solely and exclusively under the control of the Government of the United States; that all governmental functions, including police power, traffic control and maintenance of highways, are vested in and exercised by the Commanding Officer of the Reservation under the laws of the United States to the total exclusion of the governmental control of the State; that the Reservation is not a part of the State of Minnesota (R. page 2).

The answer further alleges that the Commanding Officer of the Reservation has created and maintained, in pursuance of the power vested in him, a complete system of automobile registration with rules and regulations, and that the motor vehicle which is the subject of this litigation has been duly and properly registered under such laws and regulations; that it has been provided with license plates and a registration certificate issued therefor (R. pages 2-3).

The defendant also alleges that he is willing to comply with all the laws of the State of Minnesota applicable to non-residents whenever non-residents have occasion to use the roads and public streets, and has notified the proper officers of the State, through the Registrar of Motor Vehicles at the Reservation of his readiness to comply therewith; that he has at all times carried the proper plates issued to him, and has complied with all the traffic laws and regulations of the State when he has operated the motor vehicle upon the highways of the State (R. page 3).

Upon filing the answer, the plaintiff moved for judgment on the pleadings (R. page 4). The motion was granted (R. pages 5-6). Judgment was thereupon entered for the tax and penalty (R. p. 6). From this judgment Appellant appealed to the Supreme Court of Minnesota (R. pages 7-8).

The Supreme Court affirmed the judgment of the District Court (R. pages 8-12). An application for rehearing was made by the Appellant (R. pages 12-15). This was denied May 23, 1930 (R. page 15). Judgment was entered the same date (R. page 16) from which the appeal to this Court was taken August 15, 1930 (R. pages 18-21). The judgment appealed from was final so far as the State Courts are concerned.

SUMMARY OF ARGUMENT.

The State of Minnesota may not tax property located on the Fort Snelling Reservation. Regardless of how the tax in question may be characterized by the State Supreme Court, its basis and measure show it in fact to be a property tax, and as such it is invalid as applied to the Appellant. Even taking the tax as characterized by the State Court, it is partly a property tax and the element of property tax is inseparable. Therefore the whole must fall, as denying to the Appellant due process of law.

American Railway Express Co. v. Hahn, 173 Minn. 72, 216 N. W. 542 (1927).

Even regarded as a privilege tax, the exaction imposes a more onerous burden on non-residents than is imposed on residents, by granting to residents an exemption from other personal property taxes which is not granted to non-residents, and by imposing a higher rate on non-residents for the privilege of

using the highways than is imposed on residents. These differences deny to the Appellant the equal protection of the laws.

The tax further discriminates against the Appellant by denying to him an exemption which is granted to residents of neighboring States and Countries. There is no reasonable basis for the differentiation, and therefore for this reason also, as applied to the Appellant, the tax is invalid.

ARGUMENT.

I.

THE AUTOMOBILE IN QUESTION IS NOT SUBJECT TO BE TAXED AS PROPERTY. THE MINNESOTA MOTOR VEHICLE TAX IS A PROPERTY TAX, AND AS SUCH CANNOT BE LEVIED ON THE CAR IN QUESTION.

The car in question is owned and kept upon the Fort Snelling Reservation, which is not within the jurisdiction of Minnesota, but is exclusively within the jurisdiction of the United States. The car has never been operated for hire within the State of Minnesota, nor has it ever been present within the State (as distinguished from the Reservation) for any period of ten days. It has never been operated on Minnesota highways except as a visitor for brief periods (R. page 2).

The State Supreme Court conceded that the State had no jurisdiction to tax property located on the Fort Snelling Reservation. As against the Appellant, however, it held that the tax was imposed as a privilege tax on use of the highways (R. pages 10-11).

While this Court is concluded as to the mere construction of the terms and incidence of a state tax statute, it is not con-

cluded by the State Court's characterization of the scheme of taxation in determining whether such scheme deprives a party of rights secured by the Constitution of the United States.

St. Louis S. W. Ry. v. Arkansas, 235 U. S. 350 (1914).

St. Louis Cotton Compress Company v. Arkansas, 260 U. S. 346 (1922).

Quaker City Cab Co. v. Penna, 277 U. S. 389 (1928).

Hanover Ins. Co. v. Harding, 272 U. S. 494 (1926).

In *St. Louis S. W. Ry. v. Arkansas*, supra, the Court said at page 362:

> "Upon the mere question of construction we are of course concluded by the decision of the state court of last resort. But when the question is whether a tax imposed by a State deprives a party of rights secured by the Federal Constitution, the decision is not dependent upon the form in which the taxing scheme is cast, nor upon the characterization of that scheme as adopted by the state court. We must regard the substance, rather than the form, and the controlling test is to be found in the operation and effect of the law as applied and enforced by the State."

The tax in question is levied on an ad valorem basis, measured by the manufacturers' list price on November first of the year preceding the year for which the tax in question was levied. It is graduated according to the age of the car by a system of depreciation allowances (Gen. Stats. Minn. 1927, Sec. 2674). It is thus apparent that the tax is one on value. It is measured by ownership, not by use. Regardless of what the State Supreme Court may call it, the basis and measure of the tax show that it is a property tax and not an excise. As applied to property located on the Fort Snelling Reservation, it is therefore invalid.

Surplus Trading Co. v. Cook, 281 U. S. 647 (1930).

Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 525 (1885).
Arlington Hotel Co. v. Fant, 278 U. S. 439 (1929).

In *Hendrick v. Maryland*, 235 U. S. 610 (1915), and *Kane v. New Jersey*, 242 U. S. 160 (1917), the respective taxes were measured by horsepower, which, the Court held, bore a reasonable relationship to use of the highways. This is not true of a tax which is measured in the first instance by price, and which decreases with the age of the car.

Even taking this tax as characterized by the State Supreme Court, it would be invalid as applied to the Appellant. The State Court admitted that the character of the tax as a property tax extended to the whole of it, and that the elements of privilege tax and property tax were inseparable (R. page 10). To the extent that it is a property tax, it is invalid as applied to the Appellant; and since that part of the tax which is levied on Appellant's property is inseparable from that part which is levied on his privilege, the whole tax must fall.

II.

EVEN REGARDED AS A PRIVILEGE TAX, THE TAX DENIES TO THE APPELLANT THE EQUAL PROTECTION OF THE LAWS BY IMPOSING ON HIM A GREATER BURDEN THAN IS IMPOSED ON RESIDENTS OF MINNESOTA.

As to residents of Minnesota, the tax is in lieu of all other taxes on motor vehicles. This is required by the provision of the Constitution of Minnesota authorizing the tax in question, being Section 3 of Article 16 thereof, as quoted above.

The effect of the tax is therefore to exempt motor vehicles owned by residents of Minnesota from ordinary property taxes. By the very nature of things such exemption cannot be granted

to motor vehicles owned by non-residents; they must still pay ordinary property taxes in the jurisdiction in which their vehicles are permanently located. There is thus a discrimination in favor of residents of Minnesota, by granting them an exemption which is not, and cannot be, extended to nonresident.

The case of *Walling v. Michigan*, 116 U. S. 446 (1885), presents the same point. There the State levied a tax on the sale of liquor manufactured outside the State, but not on the sale of liquor manufactured inside the State. The State also levied a tax on the manufacture of liquor within the State. It was argued that there was no discrimination, since liquor from within the State was taxed at the time of manufacture and liquor from without the State was taxed at the time of sale. This Court held the tax invalid, however, on the ground that liquor from without the State might also be taxed by the home state at the time of manufacture, and thus was liable to a heavier burden than domestic liquor. In like manner, motor vehicles of non-residents are subject to two taxes while those of residents of Minnesota are subject only to one.

This Court has repeatedly held that a taxing statute is invalid which denies to non-residents an exemption which is granted to residents.

Travis v. Yale & Towne Mfg. Co., 252 U. S. 60 (1920).

Bethlehem Motors Corp. v. Flynt, 256 U. S. 421 (1921).

Hanover Ins. Co. v. Harding, 272 U. S. 494 (1926).

Likewise the states may not impose an unconstitutional condition on granting a privilege which it may lawfully withhold.

Terral v. Burke Const. Co., 257 U. S. 529 (1922).

The discrimination is the same whether the exemption is contained in the taxing statute itself, as in the cases above, or follows as a corollary to the statute from a constitutional provision, as in the instant case. In either case the State is making an unlawful differentiation against non-residents by denying to them an exemption which is granted to residents.

Furthermore, this tax is an unfair discrimination not only because it denies an exemption to non-residents, but because it imposes a heavier burden upon them for the privilege of using the highways than is imposed upon residents. It is well settled by the State decisions that as to residents this tax is in part at least a property tax.

State v. Peterson, 159 Minn. 269, 198 N. W. 1011 (1929).
State v. Oligney, 162 Minn. 302, 202 N. W. 893 (1925).
Raymond v. Holm, 165 Minn. 215, 206 N. W. 166 (1925).
American Ry. Exp. Co. v. Holm, 173 Minn. 72, 216 N. W. 542 (1927).

Therefore, only part of its burden, as laid on residents, is in return for the privilege of using the highways; the remainder is imposed because of ownership. As to non-residents, however, the only basis for taxability is the privilege of use of the highways, since admittedly a property tax would be invalid. As to them the only basis for the whole tax is the mere privilege of use. Thus for the privilege of use the state is taking one measure as applied to residents and another and greater measure, as applied to non-residents. This it may not lawfully do within the principle of *Travis v. Yale & Towne Mfg. Co.*, 252 U. S. 60 (1920), *Bethlehem Motors Corp. v. Flynt*, 256 U. S. 421 (1921) and *Hanover Ins. Co. v. Harding*, 272 U. S. 494 (1926).

III.

REGARDED AS A PRIVILEGE TAX, THE TAX DENIES TO THE APPELLANT THE EQUAL PROTECTION OF THE LAWS BY IMPOSING ON HIM A GREATER BURDEN THAN IS IMPOSED ON RESIDENTS OF NEIGHBORING STATES.

Under Section 2674 of Minnesota General Statutes 1927, motor vehicles not employed for hire within the State, owned by non-residents, and which have been properly registered under the laws of the country or state of the owner and which carry license number plates according to the laws of such state, are authorized to use Minnesota highways for periods of ten days at a time free of any registration or tax; and upon making proper filing with the Registrar of Motor Vehicles within the ten day period, they are authorized to keep their motor vehicles within the State and use its highways for a total period of ninety days without paying any tax or fee whatsoever.

Appellant is a non-resident of Minnesota (R. page 2). His car is registered and licensed at Fort Snelling, carries the license plates there issued, and is accompanied by the registration certificate issued by the Fort Snelling Registrar of motor vehicles (R. pages 2-3). He has indicated his willingness to comply with the provisions of the State Statute in regard to non-residents (R. page 3). Nevertheless the State Supreme Court has held that this exemption does not extend to the Appellant (R. page 11). It follows that residents of Iowa, North and South Dakota, Wisconsin and Canada, who live near the boundary line may drive their cars in Minnesota every day without paying any tax or fee whatsoever, provided only that their cars are not within the State for any continuous period of ninety days. A resident of the Fort Snelling Reservation, however, who so much as runs his car across the boundary line

into Minnesota and back again, must pay the total tax. The discrimination against Appellant in favor of residents of neighboring states is clear.

This Court has recognized this rule. It said in *Hendrick v. Maryland*, supra, at page 621:

> "If the statute is otherwise valid, the alleged discrimination against residents of the District of Columbia is not adequate ground for us now to declare it altogether bad. At most they are entitled to equality of treatment, and in the absence of some definite and authoritative ruling by the courts of the State, we will not assume that upon a proper showing this will be denied."

Again in *Kane v. New Jersey*, supra, at pp. 167-168, the Court said:

> "The Maryland law contained a reciprocal provision by which nonresidents whose cars are duly registered in their home State are given, for a limited period, free use of the highways in return for similar privileges granted to residents of Maryland. Such a provision promotes the convenience of owners and prevents the relative hardship of having to pay the full registration fee for a brief use of the highways. It has become common in state legislation; and New Jersey has embodied it in her law since the trial of this case in the lower court. But it is not an essential of valid regulation. Absence of it does not involve discrimination against nonresidents; for any resident similarly situated would be subjected to the same imposition. A resident desiring to use the highways only a single day would also have to pay the full annual fee."

In the *Hendrick* and *Kane* cases there was no inequality shown. In the present case the inequality is manifest.

This Court has repeatedly held that a state, even in a tax statute, may not make a classification which is not reasonably based upon practical differences in the subjects classified.

Royster Guano Co. v. Virginia, 253 U. S. 412 (1920).
Kansas City So. Ry. v. Road Imp. Dist., 256 U. S. 658 (1920).
Air Way Corp. v. Day, 266 U. S. 71 (1924).
Hopkins v. Southern Cal. Tel. Co., 275 U. S. 393 (1928).
Louisville Gas Co. v. Coleman, 277 U. S. 32 (1928).
Quaker City Cab. Co. v. Penna., 277 U. S. 389 (1928).

There are no differences in fact between residents of Fort Snelling and of neighboring States which would justify the distinction made. As construed by the State Supreme Court, the statute denies to the Appellant the equal profection of the laws by denying to him privileges which are granted to residents of neighboring states and countries.

CONCLUSION.

No matter how it may be characterized, the tax in question denies to the Appellant his rights under the Fourteenth Amendment of the Constitution of the United States. Viewed as a property tax, it denies him due process of law by taxing property which is beyond the jurisdiction of the State. Viewed as a privilege tax, it denies him the equal protection of the laws by imposing on him without reasonable justification more onerous burdens than are imposed either on residents of Minnesota or on residents of neighboring states and countries.

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Supreme Court of the United States

No. 393.

GYNTHER STORAASLI,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

BRIEF FOR THE APPELLEE, STATE OF MINNESOTA,

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Supreme Court of the United States

No. 393.

GYNTHER STORAASLI,

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STATE OF MINNESOTA,

Appellee.

BRIEF FOR THE APPELLEE, STATE OF MINNESOTA.

STATEMENT OF ADDITIONAL FACTS AND OF QUESTIONS RAISED.

There are certain facts of which this court may take judicial notice, that should be noted.

Fort Snelling Reservation is a small military district. The map shows that its greatest length from north to south is 3¾ miles. Its greatest width at any one point from east to west is 2 miles. It is entirely within the territory of the state of Minnesota so that every time appellant drives his automobile off the reservation he passes over the highways of the state. It is immediately adjacent to the city limits of Minneapolis and St. Paul, the two largest cities of the state. These facts are of importance in considering the questions of alleged discrimination raised by appellant.

It should also be called to the court's attention at the outset that the Minnesota motor vehicle tax law contains very

liberal provisions with reference to the use of the highways of the state by non-residents. A non-resident who has registered his motor vehicle in accordance with the laws of the state or country in which he lives may operate it on the highways of the state of Minnesota for a period of three months in each calendar year without any charge whatever, merely by filing a registration certificate with the registrar of motor vehicles. He may operate his car for a period of ten days without even that formality (*Mason's Minnesota Statutes of 1927*, Section 2684). Residents of the states immediately adjoining Minnesota, and of those adjoining Canadian provinces, are granted liberal provisions on a reciprocity basis for the use of our highways during the entire year. The only charge is $1.00 (*Mason's Statutes*, Section 2684-1).

Appellant does not allege of what state he is a resident. The circumstance that he is stationed at Fort Snelling with the military forces does not affect his residence or citizenship. He does not allege that he has registered his motor vehicle in accordance with the laws of the state of his residence. He is not attempting to avoid double taxation. He asserts the right to use the highways of all the states without paying anything for that privilege in any of them.

Appellant does not base his claim upon any alleged violation of the commerce clause of the United States Constitution; neither does he claim that the law in question abridges the privileges or immunities of citizens of the United States, contrary to the Fourteenth Amendment. His answer does not even set forth that he is a citizen of the United States. His claims are that the law is an attempt to tax his motor vehicle as personal property contrary to the due process clause of the Fourteenth Amendment and that the Minnesota Statute denies to him the equal protection of the laws because of the claimed discrimination between him and resi-

dents of the state of Minnesota, and between him and residents of other states.

ARGUMENT.

I.

The Law Does Not Attempt to Impose a Property Tax on Appellant's Motor Vehicle.

Appellant's first claim is that the Minnesota motor vehicle tax is purely a property tax, and that as the state has no jurisdiction to tax personal property of a non-resident stationed at Fort Snelling the tax cannot be exacted from him without violation of the due process clause of the Fourteenth Amendment. Unless the tax in question is purely a property tax this claim is without merit.

The state concedes that it has no jurisdiction to tax personal property of a non-resident the situs of which is at the military reservation. It is also conceded that this court is not bound by the classification of the tax adopted by the state court or by the name given to it by that court, but is interested solely in its essential nature and incidents. With that in mind we wish to briefly analyze the Minnesota motor vehicle tax law.

It has been called a property tax, a combined property and privilege tax, and a privilege tax. It is a privilege tax because under article 16, section 3 of the Minnesota constitution it is imposed upon motor vehicles "using the public streets and highways of this state." No vehicle may be operated upon the highways without paying the tax. It is exacted of residents and non-residents alike, except as non-residents may be exempted by the provisions hereinbefore referred to. Since a property tax could not be imposed on

the vehicles of non-residents temporarily using the highways of the state it is clear that the legislature must have intended the tax to be a privilege tax. So did the framers of the constitution, for by the amendment it is provided: "any such law may, in the discretion of the legislature, provide for the exemption from taxation of any motor vehicle owned by a non-resident of the state, and constantly or temporarily using the streets and highways of the state." Since a property tax could not be imposed upon such vehicles the constitution clearly intended a privilege tax. The proceeds of the tax, by the express provisions of the same section of the constitution, go entirely into the state trunk highway fund to be used for the improvement of highways.

From all these aspects the tax is one imposed upon the privilege of using the highways of the state, levied to compensate the state for the special highway facilities which it has provided at great expense.

The tax is also said to be a property tax. In what respect? Appellant contends that it is a property tax because it is measured by the value of the vehicle, graduated according to age by a system of depreciation. He contends that this system of measurement is invalid as applied to a privilege tax and that the tax must, therefore, be considered to be a property tax. His statement as to the method of measuring the tax is not entirely correct. The classification is in part based on the weight of the vehicle. This is particularly true as to trucks (*Mason's Statutes, 1927*, § 2674). With regard to buses and other carriers of passengers for hire the tax is based in part upon the carrying capacity. With regard to motorcycles the tax is imposed at a flat rate regardless of value or weight.

However, regardless of these facts, we deny appellant's conclusion that a tax on the privilege of operating a motor

vehicle upon the highways may not be based on the value of the vehicle. The Massachusetts court in "*Opinions of the Justices,*" 250 Mass. 591, recognizes value as a proper basis for measuring a privilege tax of this kind, saying:

> "So far as value is an element in the ascertainment of the excise it may perhaps rest upon the inference that the greater the value of a motor vehicle, the greater may be its weight and the more severe the wear caused to the highways by its use thereof."

We think a better ground upon which to place such a conclusion is this: The state may measure a privilege tax, such as this, upon the basis of the damage to the highway, or upon the basis of the saving to the owner by reason of the improved facilities provided—in other words, upon the basis of the value of the privilege to the owner of the motor vehicle. It is common knowledge that a motor vehicle depreciates in value more rapidly when operated on a poor road than on a good road. Assume that over poor roads the rate of depreciation in value is 25% per year and over paved or improved roads is 15% per year. The saving to the owner by reason of the improvement of the highways is in exact proportion to the value of the vehicle. A $5,000.00 car will depreciate $1,250.00 in one year if operated upon poor roads and $750.00 if operated upon good roads, making a saving of $500.00. A $1,000.00 car will depreciate $250.00 if used on poor roads and $150.00 if used on improved roads, a saving of $100.00. A privilege tax for the use of improved highways measured upon the basis of the value of the car is therefore, based on the value of the privilege. There is nothing in the method of measuring the tax which is inconsistent with the nature of a privilege tax.

It is next suggested that it is a property tax because it is

in lieu of all other taxes upon the motor vehicle, or as the Minnesota court has said in its decision of this case below:

> "It is a property tax in the sense that it exempts the vehicle licensed from other taxation as property."

A non-resident of Minnesota has no right under the United States constitution to insist that motor vehicles of residents of the state of Minnesota be taxed in any particular way, or be taxed at all. If this particular tax is imposed equally on residents and non-residents the fact that no other form of tax is imposed upon the motor vehicles of residents of the state will not be regarded as important in this court. It is a matter with which a non-resident of the state has no concern. For that reason, regardless of the effect of such exemption provision upon the classification of the tax so far as the state's system of taxation is concerned, it has no weight or significance when considering the essential nature of the tax as impairing the rights of non-residents under the United States constitution.

The change in view of the Minnesota court from considering this tax only as a property tax (*State vs. Peterson*, 159 Minn. 269) to a mixed property and privilege tax (*Raymond vs. Holm*, 165 Minn. 215), (*State vs. Oligney*, 162 Minn. 302) and to a privilege tax accompanied with an exemption of the vehicle licensed from other taxation (*State vs. Storaasli*, 180 Minn. 241) is significant.

So far as this court is concerned, in considering the effect of the tax on the constitutional rights of non-residents, we believe it may be defined as a privilege tax, imposed upon the right to operate motor vehicles upon the public highways of the state, to compensate the state for the special facilities furnished, accompanied by an exemption of the vehicle from other taxation in the state. The tax is applied equally to

residents and non-residents. So is the exemption provision.

Such a privilege tax can be imposed upon the use of the highways by the appellant in this case.

Hendrick vs. Maryland, 235 U. S. 610.
Kane vs. New Jersey, 242 U. S. 160.
Morris vs. Duby, 274 U. S. 135.
Hess vs. Pawloski, 274 U. S. 352.
Clark vs. Poor, 274 U. S. 554.
Interstate Busses Corporation vs. Blodgett, 276 U. S. 245.
Bekins Van Lines vs. Riley, 280 U. S. 80.
Carley & Hamilton vs. Snook, 281 U. S. 66.

II.

The Law Does Not Discriminate Arbitrarily Between Residents and Non-Residents.

Appellant's next claim is that even if the tax is enforceable against him as a privilege tax the law is discriminatory as between non-residents and residents of the state. He says that when he pays on a certain make of car $20.00 as a privilege tax a resident with the same make of car pays the same amount in discharge both of a privilege tax and a property tax; that this denies to him and other non-residents coming within the jurisidiction of the state the equal protection of the law.

Substantially, this claim comes to an assertion that because a resident, upon paying the privilege tax in question, is exempted from further taxation of his motor vehicle, there is discrimination. The law, however, operates equally. The non-resident, upon paying the tax is also exempted from all other taxation upon the vehicle. He may keep it within the

state as long as he desires without it becoming subject to any property tax. He may use it over all the highways of the state free from any local privilege tax or exaction. Exemption from other taxes is granted to all. The mere fact that the exemption may be of more value to one taxpayer than another is immaterial.

If this be not true, many of the state income tax laws are unconstitutional. They frequently allow taxpayers to offset against their income tax the amount of the tax paid by them upon personal or real property under the general property tax laws of the state. The Wisconsin law considered in *State vs. Frear*, 148 Wis. 456, permitted the offset of personal property taxes. The Missouri law considered in *Ludlow-Saylor Wire Company vs. Wollbrinck*, 275 Mo. 339, permitted the offset of both personal and real property taxes. Could it be argued that a non-resident of the state could complain because, since he had no real or personal property subject to taxation in the state, and therefore as to him the exemption was of little value, there was discrimination in the operation of the income tax law?

Such inequalities, if they exist, do not arise by reason of any arbitrary distinctions made in the law. They are merely such as exist under any tax law because of the different situation of different taxpayers.

There is a still further reason why appellant's claim is unsound. The Fourteenth Amendment does not prevent the separate treatment of residents and non-residents where there is a substantial reason for different treatment.

Canadian National Railway Co. vs. Eggen, 252 U. S. 553.

Different provisions as to residents and non-residents may be inserted in tax laws.

Maxwell vs. Bugbee, 250 U. S. 525.

They may be differently treated in motor vehicle tax and regulatory laws.

Hess vs. Pawloski, 274 U. S. 352.

Even if, as to residents, the Minnesota motor vehicle tax is considered to be wholly a property tax, and as to non-residents, is considered to be wholly a privilege tax, there would not necessarily be discrimination. The total amount of the tax is the same in both cases. Neither residents nor non-residents can use the highways without paying these taxes. The money from both taxes goes into the state highway fund and is used solely in the improvement of the highways. The difference of treatment arises solely because of the inherent difference between residents and non-residents.

On this point the case of *Interstate Busses Corporation vs. Blodgett*, 276 U. S. 245, is important. There the claim was of discrimination in the Connecticut tax laws between interstate and intrastate carriers by motor bus. Interstate carriers were taxed by the usual registration law and in addition were required to pay a privilege tax of one cent per mile. Intrastate carriers paid the same registration tax and paid a tax measured by their gross earnings. Upon payment of this gross earnings tax they were entitled to certain deductions from other taxes and an exemption from the state income tax. They were not required to pay the one cent per mile tax required of interstate carriers. This court held that there was not shown to be any such discrimination as was prohibited by the Fourteenth Amendment; that the mere fact that the two classes were taxed under different statutes, imposing the tax in different forms, was immaterial.

III.

If the Law Discriminates in Favor of Residents Such Discrimination Is Justified.

If it can be said that the motor vehicle tax discriminates against non-residents there would be no violation of constitutional rights. The right of a state to discriminate between residents and non-residents in the distribution or enjoyment of the state owned resources is sanctioned by decisions of this court and by long continued practice. The leading case is *McReady vs. Virginia*, 94 U. S. 391, upholding a Virginia statute which forbade a person not a citizen of the state to take or plant oysters in certain rivers of the state. A state may restrict to its own citizens the enjoyment of its game.

Geer vs. Connecticut, 161 U. S. 519.

Patsone vs. Pennsylvania, 232 U. S. 138.

It may discriminate between residents and non-residents in the distribution of its public land or the use of its public forests. The principle that justifies these discriminations is that the common property of the state belongs to the people of the state, and hence, in any distribution of that property, the citizen may be preferred. The state may discriminate between its citizens or residents and aliens or non-residents in employment on public works. *People vs. Crane*, 214 N. Y. 154. The general doctrine is discussed in *Blake vs. McClung*, 172 U. S. 239.

The state of Minnesota has provided at an enormous expense to its citizens a system of improved highways. The money for this comes from many different sources. Besides the motor vehicle tax in question here, there is a gasoline excise tax; a state tax of one mill for highway aid purposes

(*Mason's Statutes, 1927*, § 2559); separate levies for road and bridge purposes by counties (*Mason's Statutes, 1927*, § 2565) and by towns (*Mason's Statutes, 1927*, § 2060). In addition to that the cities and villages of the state spend large sums on their streets. By the expenditure of vast sums of money over a long period of years our present system of highways has been provided. The highways belong to the people of the state. They were paid for by them.

There is no sound reason why the state may not discriminate in favor of its residents in the use of these highways by motor vehicles.

The right to operate motor vehicles over highways is not in a class with the fundamental right of citizens of the United States, such as the right to engage in business for a livelihood or to resort to the courts for redress of wrongs. It is a special privilege.

Solberg vs. Davenport (Iowa), 232 N. W. 477.

This court has recognized in *Hendrick vs. Maryland* that the movement of motor vehicles over the highways "is * * * abnormally destructive to the ways themselves." Stating the purpose of such taxes the court said further: "A further evident purpose was to secure some compensation for the use of facilities provided at great cost from the class for whose need they are essential *and whose operations over them are peculiarly injurious.*" In *Kane vs. New Jersey, supra*, the court referred to the right of the state "to exact reasonable compensation for special facilities afforded."

Such "an abnormally destructive" use of "special facilities" "provided at great cost" is not demandable as of right. It is different from the right of ingress or egress considered by the court in *Crandall vs. Nevada*, 73 U. S. 35.

Since the highways were provided by the people of the state at great expense to themselves a non-resident has no just cause for complaint if a reasonable privilege tax is exacted from him for their use, even if a similar tax were not exacted from residents.

IV.

The Law Does Not Arbitrarily Discriminate Between Persons Located at Fort Snelling and Other Non-Residents.

Appellant's next claim of alleged discrimination is that persons living at Fort Snelling are treated differently from residents of the other states. He refers to *Hendrick vs. Maryland* as authority on this point. The court in that case merely refused to decide the point raised as to claimed discrimination against residents of the District of Columbia.

The state contends that there is no discrimination against persons living at Fort Snelling in favor of residents of the other states; that even if there is a differenec in treatment it is justified by substantial difference in the situation of persons living at the Fort and residents of other states not located there.

As pointed out in the court below this appellant did not become a resident or a citizen of the military reservation by being stationed there. If a non-resident of Minnesota, he is a resident and citizen of some other state or country. As such, like other residents of such states or countries, he is entitled to use the highways of Minnesota without charge if his vehicle has been registered in the state or country of his residence as provided by its laws.

If this position be unsound there is ample justification for different treatment of persons located at Fort Snelling. It

may be assumed that there is vastly greater use of the Minnesota highways by them, compared with persons living in other states. The physical facts with reference to the size of the reservation and its location, as pointed out in the statement of facts herein, would justify such a discrimination.

Another reason for a difference in treatment would arise because of the reciprocal nature of the exemption privileges granted to non-residents in the use of Minnesota highways. One basis for these exemptions and privileges is that residents of other states and countries have presumably provided highway systems in their own states at great expense to them, which highways are used by residents of Minnesota. In order that residents of Minnesota may be granted the right to use such highways temporarily without tax, Minnesota extends the temporary use of its highways to residents of such states. Such reciprocal exemptions have been favorably mentioned by this court in several cases.

Hendrick vs. Maryland, supra.

Kane vs. New Jersey, supra.

Farmers Loan & Trust Co. vs. Minnesota, 280 U. S. 204.

Residents of these states may be granted special privileges to use the Minnesota highways because they have special privileges to exchange therefor.

Such a distinction is not unconstitutional unless all reciprocity provisions in state laws are unconstitutional.

V.

CONCLUSION.

In conclusion, we wish again to call attention to the essential fairness of the Minnesota motor vehicle tax law as a whole as applied to non-residents. The equal protection clause is directed only against arbitrary discrimination.

Denver vs. New York Trust Co., 229 U. S. 123.

As this court has said: "Accidental inequality is one thing; systematic discrimination is another."

First National Bank vs. Albright, 208 U. S. 548.

There is no evidence in the Minnesota law of any systematic arbitrary discrimination against any person. The rule of reason is applicable to all these constitutional provisions. As stated by this court with reference to the commerce clause: "The criterion of interference by the states with interstate commerce is one of degree. It is well understood that a certain amount of reaction upon and interference with such commerce can not be avoided if the states are to exist and make laws."

Gillespie vs. State of Oklahoma, 257 U. S. 501.

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SUPREME COURT OF THE UNITED STATES.

No. 393.—October Term, 1930.

Gynther Storaasli, Appellant, vs. State of Minnesota. } Appeal from the Supreme Court of the State of Minnesota.

[March 23, 1931.]

Mr. Justice Roberts delivered the opinion of the Court.

By Chapter 57 of the General Laws of Minnesota of 1889 that State ceded to the United States jurisdiction of the territory constituting the Fort Snelling Military Reservation, which lies entirely within the boundaries of Minnesota, immediately adjacent to the city limits of Minneapolis and St. Paul. Its greatest length from north to south is three and three-quarters miles, and from east to west, two miles. The cession was upon condition that the public highways across the reservation be kept open for public traffic. Concurrent jurisdiction to serve process, civil and criminal, of the State, and to arrest persons charged with offenses against the laws of the State, was retained. There was no other limitation.

The reservation is occupied by the military forces of the United States, and, save as above noted, jurisdiction therein is exercised by the federal governmeent to the exclusion of the State.

The Constitution of Minnesota provides[1] that a member of the military forces of the United States shall not be deemed a resident of the State as a consequence of being stationed within its borders. It also grants[2] to the legislature power to tax motor vehicles using the public streets and highways of the State on a more onerous basis than other personal property, such tax to be in lieu of all other taxes thereon, except wheelage taxes, so called, which may be imposed by any borough, city or village. Any such law may,

[1]Article 7, Section 4.

[2]Article 16, Section 3.

in the discretion of the legislature, provide for the exemption from taxation of any motor vehicle owned by a non-resident transiently or temporarily using the streets and highways of the State. The proceeds of such tax is to be paid into the Trunk Highway Sinking Fund.

By virtue of this constitutional authority, the legislature enacted a law providing for the imposition of a motor-vehicle registration tax.[3] Pursuant to the statute, the Secretary of State filed in the office of the clerk of the district court of Ramsey County a list of motor vehicles on which the tax and penalty for 1929 appeared delinquent. The appellant's automobile was included in the list. Appellant filed answer to the notice, denying that any tax or penalty was due the State; alleging that he was the sole owner of the vehicle, was a non-resident of the State of Minnesota, a member of the military forces of the United States quartered and resident upon the Fort Snelling Reservation, that the vehicle had not been operated for hire, nor been present within the jurisdiction of Minnesota upon its roads, highways or streets, for any period of ten days, and was never operated thereon, except as a visitor for brief periods.

After averring that the reservation is solely under the control of the United States and that all governmental functions, including police power, traffic control, and maintenance of highways, are vested in and exercised by the commanding officer under the laws of the United States, to the total exclusion of control by the State, and that the reservation is no part of the State of Minnesota, the answer states that the commanding officer has created and maintains, pursuant to his powers, a complete system of automobile registration, with rules and regulations, and that the vehicle in question is duly registered under such laws and regulations and has license plates and a registration certificate issued by federal authority, which has at all times been carried. It asserts appellant's willingness and ability to comply with all the laws of Minnesota applicable to non-residents who have occasion to use its roads and streets, and that he has so notified the State officials, and has complied with all the traffic laws and regulations of the State when operating upon its highways.

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[3]Mason's Minn. Stat. 1927, §§ 2672-2704, incl., as amended S. L. 1929, Chap. 335.

On appellee's motion, judgment was entered on the pleadings for the tax and penalty. Upon appeal, the Supreme Court of Minnesota affirmed the judgment.[4] The appellant brought the case to this Court, having at all stages in the courts below asserted rights under the Fourteenth Amendment, which were passed on and determined adversely to his contentions. He claims that the tax in question is a property tax, and that the State may not tax property located on the Fort Snelling Reservation. In the alternative he says if the act levies a privilege tax, as applied to him, it deprives him of equal protection of the laws by imposing upon him a greater burden than that laid on residents of Minnesota, or residents of neighboring States.

The argument that the tax is one on property is founded on the fact that it is measured by the cost of the motor car (less certain annual allowances for depreciation), and that it is in lieu of all other taxes thereon except wheelage taxes levied by municipalities.[5] It is to be remarked, however, that a minimum tax is prescribed for cars of certain weights, irrespective of value; that the act levies the tax on vehicles "using the public streets or highways in the State"; and provides that they "shall be privileged to use the public streets and highways on the basis and at the rates for each calendar year as follows" . . .[6]

The state court held that "the tax is both a property tax and a privilege tax. It is a property tax in the sense that it exempts the vehicle licensed from other taxation as property. It is in lieu of other taxes. But it is equally clear that it is a privilege tax. . . . The character of a privilege tax extends to the whole of the tax."

This Court, while bound by the state court's decision as to the meaning and application of the law, decides for itself the character of the tax, and whether as applied to the appellant it affects his constitutional rights. We think it plain that the levy is an excise for the privilege of using the highways.

It is denominated a privilege tax. The car cannot use the highways unless it is paid. The statute contains the usual provisions for registration, issuance and display of number plates, &c.[7] Resi-

[4] 180 Minn. 241; 230 N. W. 572.
[5] Mason's Minn. Stat. 1927, § 2674.
[6] *Ibid.*
[7] *Ibid*, § 2675.

dents of other states who desire to use the highways for more than the period specified in certain sections extending the privilege, must register their vehicles and pay the same tax as residents of Minnesota.[8] The claim that the state is attempting to tax appellant's property situate without its jurisdiction cannot be sustained.

Viewed as imposing a privilege tax, the statute is alleged to discriminate against appellant in favor of residents, because it exempts vehicles licensed under it from payment of property taxes. But the exemption is a proper and lawful one, and appellant cannot make out a discrimination against him from the mere fact that he is not in a position to claim it. Doubtless in the case of every taxing act which creates exemptions there are those who cannot bring themselves within the exempt class, but this does not deprive them of the equal protection of the law.

Finally, appellant says the act accords certain privileges to residents of neighboring states, which are denied to him, and hence the law operates unequally as against him. The section of the statute to which he refers provides that vehicles owned by non-residents, properly registered in the country or state of the owner, and carrying license number plates of such state, are authorized to use Minnesota highways for ten days without registration or tax, and upon making proper filing with the Registrar of Motor Vehicles within the ten-day period, are authorized to use the highways of the state for a total period of ninety days without any payment whatever.[9] Appellant says that as he is a non-resident of Minnesota, has registered his car in the Fort Snelling Reservation, as required by the authorities thereof, carries license number plates issued by such authorities, and has offered to make proper filing in Minnesota, to refuse him the privilege accorded to other non-residents deprives him of the equal protection of the law.

But as was pointed out in *Kane* v. *New Jersey*[10] the absence of any such provision in favor of non-residents, would not render the law discriminatory. A resident of the state who desires to operate his car for a single day is liable for the entire year's tax. If the state determines to extend a privilege to non-residents, it may with propriety limit the concession to those who have duly registered

[8] Mason's Minn. Stat. 1927, § 2684.

[9] *Ibid.*

[10] 242 U. S. 160; 61 L. Ed. 222.

their vehicles in another state or country. The mere fact that appellant has not so registered his car and cannot, therefore, bring himself within the class benefitted by the exemption, does not create a discrimination against him. The state was not bound to make a classification with respect to exemptions for him and those similarly situated. Nothing said in *Hendrick* v. *Maryland*,[11] establishes any such principle. Nor are the authorities which forbid a difference in the method of calculating the amount of the tax itself depending solely on the fact of residence within or without the state relevant to the issue in this case.[12] We find no improper classification or discrimination. The judgment is

Affirmed.

Mr. Justice BUTLER took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[11] 235 U. S. 610; 59 L. Ed. 385.

[12] *Travis* v. *Yale & Towne Mfg. Co.*, 252 U. S. 60; 64 L. Ed. 460; *Bethlehem Motors Corp.* v. *Flynt*, 256 U. S. 421; 65 L. Ed. 1029; *Hanover Fire Ins. Co.* v. *Harding*, 272 U. S. 494; 71 L. Ed. 372.